VOLUME I

(Pages 1 to [illegible], inclusive)

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

(October Term, 1962)

No. 51

[illegible], ET AL., PETITIONERS

v.

EVERETT G. RANK, ET AL.

No. 61

CITY OF FRESNO, PETITIONER

v.

CALIFORNIA, ET AL.

No. 115

THE [illegible] IRRIGATION DISTRICT, ET AL., PETITIONERS

v.

EVERETT G. RANK, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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NO. 61, PETITION FOR CERTIORARI FILED DECEMBER 11, 1961
NO. 115, PETITION FOR CERTIORARI FILED MAY 14, 1962
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No. 15840

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STATE OF CALIFORNIA; UNITED STATES OF AMERICA, et al., Appellants,

vs.

EVERETT G. RANK, et al., Appellees.

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—direct (Rowe) 1992, 2088
—cross (Abercrombie) 2011
—redirect (Rowe) 2012
—recalled, direct (Rowe) 2016
—cross (Goldberg) 2017
—redirect (Rowe) 2021
—recross (Goldberg) 2033
—recross (McPherson) 2037

Stanley, George M.
—direct (Rowe) 2040
—cross (Goldberg) 2045
—cross (McPherson) 2047
—recalled, direct (Rowe) 2099

Sullivan, Edwin F.
—direct (Rowe) 2103
—cross (Goldberg) 2122

Winton, J. M.
—direct (Rowe) 2182

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In The Superior Court of the State of California,
in and for the County of Fresno

No. 74627, Dept. 4

EVERETT G. RANK, DUANE M. FOLSOM, BERTHA FOLSOM, E. FLORENCE FOLSOM, EVELYN LYDIA RANK, J. E. COBB, RUBY COBB, LAWRENCE D. COBB, MARJORIE E. SIMS, L. L. HOWARD, ALMA HOWARD and AMELIA ANN HOLLAND,

Plaintiffs,

vs.

JULIUS A. KRUG, as Secretary of the Interior of the United States of America; MICHAEL W. STRAUS, as Commissioner of the Bureau of Reclamation of the United States of America; RICHARD BOKE, as Regional Director of the Bureau of Reclamation of the United States of America; MARTIN BLOTE, as Regional Water Master of the Bureau of Reclamation of the United States of America; JACK RODNER, as District Manager of the Bureau of Reclamation of the United States of America; R. K. DURANT, as Construction Engineer and Resident Engineer at Friant Dam for the Bureau of Reclamation of the United States of America; JOSEPH A. SECARA, ARNOLD SALIABERRY, CHESTER A. RIDGEWAY, EARL YOCUM AND CARL GAUMNITZ, as Directors of the Madera Irrigation District,

a Public Corporation; the MADERA IRRIGATION DISTRICT, a Public Corporation; JOHN DOE DIRECTORS ONE to TWO HUNDRED; JOHN DOE DISTRICTS ONE to FORTY; RICHARD ROE DIRECTORS ONE to FIVE, RICHARD ROE IRRIGATION DISTRICT; MILO MARSHALL, ALBERT DAVIS, FRANK PANERO, D. L. SHIFFLEP and E. J. GIRARD, as Directors of the Southern San Joaquin Municipal Utility District, a Public Corporation; SOUTHERN SAN JOAQUIN MUNICIPAL UTILITY DISTRICT, a Public Corporation; and JOHN ROE ONE to ONE THOUSAND, JULIUS A. KRUG, MICHAEL W. STRAUS, RICHARD BOKE, MARTIN BLOTE, JACK RODNER, and R. K. DURANT,

Defendants.

COMPLAINT

Come now the plaintiffs and complain of defendants and for cause of action allege as follows:

I.

That defendant Julius A. Krug is the duly appointed, qualified and acting Secretary of the Interior of the United States of America; that defendant Michael W. Straus is the duly appointed, qualified and acting Chief of the Bureau of Reclamation of the United States of America; that defendant Richard Boke is the duly appointed, qualified and acting Regional Director of the Bureau of

Reclamation of the United States of America; that defendant Martin Blote is the duly appointed, qualified and acting Regional Water Master of the Bureau of Reclamation of the United States of America; that defendant Jack Rodner is the duly appointed, qualified and acting District Manager of the Bureau of Reclamation of the United States of America for the area including Friant Dam; that defendant R. K. Durant is the duly appointed, qualified and acting Construction Engineer and Engineer in charge of Friant Dam for the Bureau of Reclamation of the United States of America; that defendants Joseph A. Secara, Arnold Sallaberry, Chester A. Ridgeway, Earl Yocum and Carl Gaumnitz are, and were at all times herein mentioned, the duly elected, qualified and acting Directors of the Madera Irrigation District, a public corporation; that the defendant Madera Irrigation District is, and was at all times herein mentioned, a public corporation formed, organized and existing under and by virtue of the laws of the State of California; that defendants Milo Marshall, Albert Davis, Frank Panero, D. L. Shifflep and E. J. Girard are, and were at all times herein mentioned, the duly elected, qualified and acting Directors of the Southern San Joaquin Municipal Utility District, a public corporation; that the Southern San Joaquin Municipal Utility District is, and was at all times herein mentioned, a public corporation, formed, organized and existing under and by virtue of the laws of the State of California; that defendants Richard Roe Directors One to Five are the duly

appointed, acting and qualified Directors of the Richard Roe District; that defendant Richard Roe District is a corporation incorporated under and by virtue of the laws of the State of California; that defendants Directors John Doe One to Two Hundred are the duly appointed, qualified and acting Directors of those certain Public Corporations herein sued as John Doe Districts One to Forty; that John Doe Districts One to Forty are Public Corporations incorporated under and by virtue of the laws of the State of California.

II.

That the San Joaquin River is, and was at all times herein mentioned, a natural stream and water course with well defined bed and banks rising and having its source in the Sierra Nevada Mountains of California and does, and at all times herein mentioned did, flow in its course toward the sea in a general Westerly direction to Mendota Dam across said San Joaquin River in the vicinity of Mendota, California, and thence Northwesterly through Fresno, Madera, Merced, Stanislaus, San Joaquin and Contra Costa Counties of California to its mouth in San Francisco Bay in California, and thence and through said Bay to the Pacific Ocean. That said San Joaquin River in flowing down and through its natural bed and channel in its course toward the sea seeps, percolates and flows into, supports, supplies, sustains and replenishes a large body of underground and percolating waters, water stratas and subterranean streams lying underneath the natural bed and channel of said San Joaquin

River between Friant and Mendota Dams on said River and which said underground and percolating waters, water stratas and subterranean streams plaintiffs are informed and believe and upon such information and belief allege extend approximately fifteen miles southerly from and parellel to the south bank of said San Joaquin River and five miles Northerly from and parallel to the North bank of said San Joaquin River between Friant Dam and Mendota Dam on said San Joaquin River.

III.

That plaintiffs are, and were at all times herein mentioned, the owners of and entitled to possession of certain lands located in the Counties of Madera and Fresno, State of California, abutting, bordering upon and underlying the San Joaquin River, all of which said lands are, and at all times herein mentioned were, and from time immemorial have been riparian to said San Joaquin River, and all of which said lands of plaintiffs are more particularly set forth in Exhibit "A" hereof which said Exhibit "A" is annexed hereto and made a part of this complaint the same as if fully set forth herein. That the said lands of Duane M. Folsom, Bertha Folsom and E. Florence Folsom, three of the plaintiffs herein, are more fully set forth and described as Parcel I of Exhibit "A" hereof; that the said lands of Everett G. Rank and Evelyn Lydia Rank, two of the plaintiffs herein, are more particularly set forth and described as Parcel II of said Exhibit "A" hereof; that the said lands of Evelyn Lydia Rank,

one of the plaintiffs herein, are more particularly set forth and described as Parcel III of said Exhibit "A" hereof; that the said lands of Everett G. Rank, one of the plaintiffs herein, are more particularly set forth and described as Parcel IV of said Exhibit "A" hereof; that the said lands of J. E. Cobb, one of the plaintiffs herein, are more particularly set forth and described as Parcel V of said Exhibit "A" hereof; that the said lands of Lawrence D. Cobb, one of the plaintiffs herein, are more particularly set forth and described as Parcel VI of said Exhibit "A" hereof; that the said lands of J. E. Cobb and Ruby Cobb, two of the plaintiffs herein, are more particularly set forth and described as Parcel VII of said Exhibit "A" hereof; that the said lands of Marjorie E. Sims, one of the plaintiffs herein, are more particularly set forth and described as Parcel VIII of said Exhibit "A" hereof; that the said lands of L. L. Howard and Alma Howard, two of the plaintiffs herein, are more particularly set forth and described as Parcel IX of said Exhibit "A" hereof; that the said lands of Amelia Ann Holland, one of the plaintiffs herein, are more particularly set forth and described as Parcel X of said Exhibit "A" hereof; that all of said lands of plaintiffs more particularly described in Exhibit "A" hereof are, and at all times herein mentioned and from time immemorial have overlayed and contained underground and percolating waters, water stratas and subterranean streams which are, and at all times herein mentioned were, fed by, supplied by, sustained by, supported by and replenished by said

San Joaquin River, the waters of which flowed, seeped and percolated from said San Joaquin River.

IV.

That plaintiffs are now engaged, and plaintiffs and their predecessors in title and interest in said lands described in Exhibit "A" hereof, have continuously been engaged for more than sixty years last past and long before any of the dams, diversions, works and other structures of plaintiffs hereinafter mentioned were either begun, started or conceived of, in reasonably and beneficially using all of said waters of said San Joaquin River by means of reasonable methods of use and by means of reasonable methods of diversion for domestic, poultry, cattle and animal drinking water, and in farming all of said lands of plaintiffs more particularly described in Exhibit "A" hereof (with the exception of a small amount of timber and brush land which plaintiffs are shortly intending to cut down and turn into irrigated pasture and crop lands), to crops of grapes, peaches, plums and other fruits, cotton, alfalfa, grain, corn, melons, potatoes, vegetables and to natural and irrigated pasturage (upon which pasturage plaintiffs and their predecessors in interest and title, have, during all times herein mentioned, raised cattle, horses, sheep, hogs and poultry and some of which said natural pasturage plaintiffs, within a reasonable time, intend to and will plant to irrigated pasturage and crops), by means of pumping the waters of said San Joaquin River out of the channel and natural bed of said San Joaquin

River and distributing said water through concrete pipe lines, conduits, canals and ditches to and depositing said water upon said lands of plaintiffs set forth and described in said Exhibit "A" hereof, and by means of pumping from said underground and percolating waters and said waters of said subterranean streams and water stratas underlying said lands of plaintiffs more particularly described in said Exhibit "A" hereof (all of which said underground and percolating waters, water stratas and said subterranean streams are fed by, sustained by, supplied by, supported by, flow and percolate from and are fed by and replenished by said waters of said San Joaquin River, as aforesaid), from wells located upon said lands of plaintiffs, described in Exhibit "A" hereof, and distributing said pumped waters and depositing the same through concrete pipe lines, conduits, canals and ditches upon said lands of plaintiffs, set forth and described in Exhibit "A" hereof, and by means of sub-irrigation, capillarity, percolation and like natural forces operating between said underground and percolating waters and subterranean streams and water stratas underlying said lands of plaintiffs and the roots of the trees, vines, grasses and crops so grown on said lands of plaintiffs.

That all of said pumps, wells, ditches, concrete pipe lines and conduits in this said paragraph referred to were and are constructed and maintained in accordance with recognized and generally accepted engineering standards and practices, and all of said waters of said San Joaquin River so de-

posited or used upon, under, or in said lands of plaintiffs and in the sub-irrigation of said lands of plaintiffs were and are deposited upon and used upon, under and in said lands of plaintiffs described in Exhibit "A" hereof, in accordance with the best, recognized and accepted agricultural standards and practices both as to time of, amounts of and methods of use of said waters.

That all of the waters of said San Joaquin River are and will be needed by plaintiffs for the purposes hereinabove and in this paragraph set forth and for replenishing, sustaining, feeding, supplying and supporting, and for seeping into, percolating and flowing into said underground and percolating water, water stratas and said subterranean streams and said sub-irrigation of said lands.

That from the immemorial and at all times herein mentioned, said San Joaquin River has and now does contain a major Pacific Coast salmon run, large runs and schools of bass, trout, catfish, shad and other edible fish, all of which said fish swim in and spawn in said San Joaquin River where said River flows over said lands of plaintiffs. That for over sixty years last past and at all time hereinmentioned plaintiffs, and their predecessors in title and interest have and do *not* fish the waters of said San Joaquin River for said above-described fish where it overflows and flows past said lands of plaintiffs set forth and described in Exhibit "A" hereof and do and have used, and now do use all those portions of plaintiffs' lands described in Exhibit "A" hereof, and particularly those lands lying under

and immediately adjacent to the bed and flow of the water of said San Joaquin River, for commercial and private fishing, boating, picnicking and general resort and recreational purposes, and that all of the flow of the waters of said San Joaquin River are needed and necessary for and will be needed and necessary for the maintenance of said fish life, fishing, boating, camping, picnicking, general resort and recreational purposes. That the laws and statutes of the State of California at all times herein mentioned have provided as follows:

"525. Passage of Water for Fish Below Dam.

"The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam. During the minimum flow of water in any river or stream, permission may be granted by the commission to the owner of any dam to allow sufficient water to pass through a culvert, waste gate, or over or around the dam, to keep in good condition any fish that may be planted or exist below the dam when, in the judgment of the commission, it is impracticable or detrimental to the owner to pass the water through the fishway."

California Fish and Game Code, Section 525.

"520. Definitions. As used in this article:

"* * *

"(c) 'Owner' includes the United States (except that for the purpose of Section 520.5, 522, 526 and 534 'owner' does not include the United States as to any dam in the condition the dam exists on the effective date of the amendment to this section), a person, political subdivision, and a district (other than a fish and game district), owning, controlling or operating a dam or pipe;

"(d) 'United States' means the United States of America, and in relation to any particular matter includes the officers, agents, employees, agencies, or instrumentalities authorized to act in relation thereto. (Amended by Stats. 1945, ch. 1101, 1.)"

California Fish and Game Code, Section 520.

"545. Inclusion of United States in Article: Legislative Declaration.

"In including the United States within the scope of this article the Legislature declares that it understands that the law and policy of the United States with respect to the development of water resources, the reclamation of land from flood and overflow, and in all other respects is to comply with State laws respecting water. The provisions of this article provide a procedure for the United States to comply with the provisions and policy of State law respecting its subject matter. (Added by Stats. 1945, ch. 1101, 4.)"

California Fish and Game Code, Section 545.

That at all times in this said paragraph mentioned all of the lands of plaintiffs, described in

Exhibit "A" hereof, lying in and immediately adjacent to the natural channel of said San Joaquin River have contained and do now contain valuable deposits of rock, sand and gravel annually formed and renewed by the natural and seasonal flow of the waters of said San Joaquin River, flowing past, through and over the said lands of plaintiffs, more particularly described in Exhibit "A" hereof, which said sand, rock and gravel deposits and particularly those lying in that portion of the channel of said San Joaquin River running through Parcel VII of Exhibit "A" is being used for commercial sand, gravel and rock extraction and that all of the waters of said San Joaquin River are needed and necessary in order to operate through reasonable methods of diversion and use, said commercial sand, rock and gravel extractions and to annually renew said rock, sand and gravel deposits in and upon the said lands of plaintiffs described in Exhibit "A" hereof.

That by reason of all of the foregoing matters in this said paragraph IV set forth, plaintiffs are the owners of, need and are entitled to the use of all of the flow of the waters of said San Joaquin River flowing past, through or over said lands of plaintiffs, or which in the course of nature would flow past, through, in or over said lands of plaintiffs hereinabove described except for the dams, obstructions and diversions hereinafter mentioned, and are the owners of, need and are entitled to the use of all of said underground a l percolating waters, water stratas and said waters of said subterranean streams

underlying and in said hereinbefore described lands of said plaintiffs for said present uses hereinabove set forth, and which may and will be required for reasonably prospective recognized uses on said lands of plaintiff's.

That plaintiffs and their predecessors in title, and each of them, have diverted, pumped and used said waters of said San Joaquin River openly and notoriously and under claim of ownership and right upon their said lands described in Exhibit "A" hereof as aforesaid, continuously for more than forty years prior hereto.

V.

That defendants Julius A. Krug, purporting to act as Secretary of the Interior of the United States of America; Michael W. Straus, purporting to act as Chief of the Bureau of Reclamation of the United States of America, Richard Boke, purporting to act as Regional Director of the Bureau of Reclamation of the United States of America, Marvin Blote, purporting to act as Regional Water Master of the Bureau of Reclamation of the United States of America, Jack Rodner purporting to act as District Manager of the Bureau of Reclamation of the United States of America and R. K. Durant purporting to act as Construction Engineer and Resident Engineer at Friant Dam for the Bureau of Reclamation of the United States of America, are now engaged illegally, unlawfully without right and acting in excess of the authority of their respective offices and employment and in excess of

their authority conferred upon them by the Constitution and laws of the United States of America, in constructing a dam across said San Joaquin River near Friant, California, about eight miles upstream from the lands of plaintiffs set forth and described in Exhibit "A" hereof, which said dam is known as Friant Dam of the Central Valley's Project of said United States Bureau of Reclamation, and consists of certain concrete abutments, levees, drum gates and diversion works, together with concrete canals and other diversion works by means of which said defendants in this said paragraph hereinbefore mentioned now are and threaten to, intend to and will unless restrained by the order of the above-entitled court illegally, unlawfully, without right and in excess of their authority as aforesaid, impound and store the waters of said San Joaquin River from one season to another and from wet to dry seasons and from dry to wet seasons and make other cyclic storage and threaten to, intend to and will unless restrained by the order of the above-entitled court illegally and unlawfully divert the entire flow of said San Joaquin River from points on said River at said Friant Dam now being constructed across said River as aforesaid and illegally, unlawfully and without authority as aforesaid transport all of the water which in the course of nature flow down said San Joaquin River from the natural channel and River bed of plaintiffs more particularly described in Exhibit "A" hereof all of which waters are now needed and which will be required for reasonable prospective

recognized uses on, under and in said lands of plaintiffs for the uses hereinbefore enumerated to lands which are not riparian to said San Joaquin River and which have no appropriate prescriptive or other rights in or to any of the waters of said River, and the owners of which lands have no riparian appropriative, prescriptive or other rights to the waters of said San Joaquin River.

VI.

That within five years last past the predecessors in office of said defendants Julius A. Krug, Michael W. Straus and Richard Boke, to wit, Harold Ickes, the duly appointed and acting Secretary of the Interior of the United States; Harry Bashore, the duly appointed, qualified and acting Chief of the Bureau of Reclamation of the United States, and Charles Carey, the Regional Director of the Bureau of Reclamation of the United States, began through said Madera Irrigation District, a public corporation, and said uncompleted Friant Dam, located across the said San Joaquin River near Friant, California, and certain canals and works of diversions to illegally and unlawfully and without authority and in excess of their authority to impound, store, divert and carry away and deliver to defendant Madera Irrigation District, a public corporation, approximately ten per cent of the flow of the San Joaquin River, which, except for such uncompleted dams and works of diversions, would normally and in the course of nature flow by, through, under and upon and be used on the lands

of plaintiffs as hereinabove mentioned and set forth, and to illegally and unlawfully and without authority, divert and carry away said ten per cent of the waters of said San Joaquin River to part of the lands lying within the boundaries of said Madera Irrigation District which said lands are not and never have been riparian to said San Joaquin River and which had no right, title and/or interest, nor have the owners of said lands any right, title and/or interest in or to any of the waters of said San Joaquin River by prescription, valid appropriation or otherwise; that said defendant Madera Irrigation District, a public corporation, has at no time made any beneficial use of said ten per cent or any part of the waters of said San Joaquin River so diverted and transported from said San Joaquin River upon said other non-riparian lands lying within said boundaries of said defendant Madera Irrigation District, a public corporation, but have deposited and dissipated said ten per cent of the waters of said San Joaquin River so diverted through unreasonable, wasteful, scientifically unsound and unfarmerlike methods of diversions and use upon said lands and have wasted all of the said ten per cent of said waters of said San Joaquin River by means of dumping the same without any proper diversion works onto dry washes and non-irrigable and submarginal lands lying within and without the boundaries of said defendant Madera Irrigation District, a public corporation, and otherwise wasting and dissipating the same; that said defendants Julius A. Krug purporting to act as Secretary of

the Interior of the United States of America; Michael W. Straus purporting to act as Chief of the Bureau of Reclamation of the United States of America; Richard Boke purporting to act as Regional Water Master of the Bureau of Reclamation; Martin Blote purporting to act as Regional Water Master of the Bureau of Reclamation of the United States of America; Jack Rodner purporting to act as District Manager of the Bureau of Reclamation of the United States of America, and R. K. Durant purporting to act as Construction Engineer and Resident Engineer at Friant Dam for the Bureau of Reclamation of the United States of America, are continuing to illegally and unlawfully and in excess of their authority of their respective offices and employments and in excess of their authority conferred upon them by the Constitution and statutes of the United States of America, continuously impound, store, divert, transport and sell said ten per cent of the waters of said San Joaquin River to said defendant Madera Irrigation District, a public corporation, and said defendant Madera Irrigation District, a public corporation, is continuing to purchase and accept said ten per cent of the said waters of said San Joaquin River to waste said waters as aforesaid; that all of said illegal and unlawful impounding, storage, diversion, transportation and sale of said waters of the San Joaquin River in this paragraph mentioned, have irreparably injured the crops, animals, waters, property and land of plaintiffs and the health of plaintiffs, substantially increase the cost of irrigating and pro-

ducing said crops and pasture heretofore and now grown on said lands of plaintiffs and if continued will irreparably injure the crops, animals, lands, waters and property and health of plaintiffs and cause plaintiffs irreparable loss and damage unless restrained by order of the above-entitled court as hereinafter more particularly set forth and described; that no public use by the United States nor said defendant Madera Irrigation District nor the public in general, nor public interest therein has prior hereto attached to any of the impounding, storage, diversions, transportation, use or sale of said ten per cent of the waters of said San Joaquin River to said defendant Madera Irrigation District, a public corporation.

VII.

That on or about the 15th day of October, 1945, and in pursuance of said illegal and unlawful plans of defendants to illegally, unlawfully and without authority to impound, store, divert, transport and use said water of said San Joaquin River, defendant Harold Ickes purporting to act as Secretary of the Interior, illegally and unlawfully made and executed and entered into a purported contract with defendant the South San Joaquin Municipal Utility District, a public corporation, which said purported contract marked Exhibit "B" and expressly made a part hereof, whereby defendant Julius A. Krug purporting to act as Secretary of the Interior of the United States of America, defendant Michael Straus purporting to act as Chief of the Bureau of

Reclamation of the United States of America, defendant Richard Boke purporting to act as Regional Director of the United States of America, defendant Martin Blote purporting to act as Regional Water Master of the Bureau of Reclamation of the United States of America; defendant Jack Rodner purporting to act as District Manager of the Bureau of Reclamation of the United States of America, and defendant R. K. Durant purporting to act as Construction Engineer and Resident Engineer at Friant Dam for the Bureau of Reclamation of the United States of America, threaten to, intend to and will unless restrained by the order of the above-entitled court, illegally, unlawfully and without and in excess of their authority as hereinbefore set forth, impound, divert and transport away from said San Joaquin River and sell a substantial part of waters of said San Joaquin River which normally would flow past, by and through, under, percolate and be used upon the lands of plaintiffs as hereinbefore more particularly set forth, to defendant South San Joaquin Municipal Utility District, a public corporation, for use upon the lands included within the boundaries of said defendant South San Joaquin Municipal Utility district, that a copy of said contract is annexed hereto as Exhibit "B" as aforesaid; that none of the lands of said defendant South San Joaquin Municipal Utility District are riparian to nor have appropriative or prescriptive or other rights nor have the owners of said lands any riparian, appropriative or prescriptive or other rights nor any rights whatsoever in or to any of the waters

of said San Joaquin River and which said lands of said defendant South San Joaquin Municipal Utility District, a public corporation, lies entirely outside of and beyond the watershed of said San Joaquin River; that said defendant South San Joaquin Municipal Utility District, a public corporation, has not started or completed any works of diversion or transportation or projects to use said waters of said San Joaquin River so contracted for and that said contract herein referred to as Exhibit "B" hereof, which said Exhibit "B" is an approximate copy of the original contract, is illegal and void for the further reason it was entered into prematurely and does not provide for the repayment of the true proportionate part of the cost of construction of the works necessary to impound, divert, transport and carry said waters of said San Joaquin River to the lands lying within the boundaries of said defendant South San Joaquin Municipal Utility District, a public corporation, and for the cost of operating and maintaining the works during the time they are in control of the United States within the time provided, but which plaintiffs are informed and believe and upon such information and belief aver provides only for the repayment of less than one-half of said proportionate part of said costs, all of which is, and were at all times herein mentioned prohibited by and in violation of U. S. C. Title 43, paragraph 423 C, and other statutes of the United States of America, and for the reason that said contract is intended to and will furnish waters of said San Joaquin River through the works of

Reclamation of lands within the boundaries of defendant South San Joaquin Municipal Utility District, a public corporation, more water than they are legally entitled to under what is known as the Central Valley Plan of the United States Bureau of Reclamation and violates the 160-acre limitation held by or owned by a single owner the required residence requirements, all in violation of U. S. C. Title 43, paragraphs 418, 431, 423 C, 443, 462 and 461 and other provisions of U. S. C. Title 43, and was not in any manner executed in accordance or conformity to or with the terms and provisions of said Article 43 of the Statutes of the United States; that no public use or interest has attached to any of the waters of said San Joaquin River mentioned or referred to in said Exhibit "B" either on the part of the United States nor of said South San Joaquin Municipal Utility District, a public corporation, hereof and that if defendants Julius A. Krug, purporting to act as Secretary of the Interior of the United States of America; Michael W. Straus, purporting to act as Chief of the Bureau of Reclamation of the United States of America; Richard Boke, purporting to act as Regional Director of the United States Bureau of Reclamation; Martin Blote, purporting to act as Regional Water Master of the Bureau of Reclamation of the United States of America; Jack Rodner, purporting to act as District Manager of the Bureau of Reclamation of the United States of America, and R. K. Durant, purporting to act as Construction Engineer and Resident Engineer at Friant

Dam for the Bureau of Reclamation of the United States of America, are allowed to so illegally and unlawfully impound, store, divert, transport, carry away or sell any waters of said San Joaquin River as hereinabove referred to, to said defendant South San Joaquin Municipal Utility District, a public corporation, plaintiffs, their lands, crops and animals will be irreparably damaged and destroyed and plaintiffs will be deprived of their property without due process of law and their property taken and damaged for public use without just compensation in violation of the V and XII Amendments to the Constitution of the United States of America and Section 14 of Article I of the Constitution of the State of California.

VIII.

That plaintiffs have demanded that defendants cease said illegal and unlawful impounding, storage and other acts and said threatened illegal diversions, transportation and uses hereinabove and in this complaint more specifically enumerated, but that defendants and each of them have ignored said demands and have refused to perform or carry out said demands and continued in their beforementioned acts and conduct and will commence and continue them unless restrained by order of the above-entitled court.

IX.

That said impounding and storage of water in said Friant Dam and said threatened diversion,

transportation and use of said water of the San Joaquin River by defendants as aforesaid are and will be wholly without right, and illegal and unlawful and in excess of the authority of said defendants and in excess of the authority conferred upon defendants by the Constitution, laws and Statutes of the United States of America; that said threatened and intended illegal impounding, storage, diversion, transportation and use by said defendants of said waters of said San Joaquin River as aforesaid will cause plaintiffs and other landowners whose lands abut and border upon said San Joaquin River between Friant Dam and Mendota Dam, and which overlie the percolating and underground waters, water stratas and subterranean streams fed by, supplied and sustained by said San Joaquin River as aforesaid, great and irreparable loss, injury and damage and in this respect plaintiff alleges, among other things, more particularly as follows:

That the waters of the San Joaquin River, which said defendants thus intend to impound, store, divert, transport and use as aforesaid, with the exception of said approximately ten per cent of the said waters of said River intended to be diverted to defendant Madera Irrigation District, a public corporation, as aforesaid, will be taken entirely outside of, and away from the watershed of said San Joaquin River, and will be forever lost to said watershed with no means of returning thereto; that the capacity of said Friant Dam and said defendants canals and other works of diversions

are and will be such that practically all of the entire flow of said river can be thus impounded, stored, diverted, transported and taken away from and used outside of the San Joaquin River watershed and prevented from flowing past, in, under and through lands of plaintiffs or into said hereinbefore-mentioned underground and percolating waters, water stratas and subterranean streams underlying the lands of plaintiffs as aforesaid.

That the impounding, storage, transportation, diversion and use of said waters by defendants, as aforesaid, will deprive plaintiffs and their fellow landowners of large quanitites of water needed by them for the irrigation of their lands and for the uses hereinabove mentioned and of other said beneficial uses before mentioned; that such unlawful impounding, storage, diversions, transportation and uses by defendants will cause the flow of the San Joaquin River below said Friant Dam to disappear; that said unlawful and illegal impounding, storage, diversions, transportations and use of the waters of said San Joaquin River by defendants with their consequent stoppage of the flow of said San Joaquin River below Friant Dam will prevent plaintiffs pumping from the natural bed and channel of said San Joaquin River and irrigating said lands of plaintiffs and will prevent the normal and necessary replenishment and replacement of the underground water and percolating waters and subterranean streams and water stratas underlying the land of plaintiffs as aforesaid, and will immediately cause an immediate and cumulative increase in plaintiffs' costs of pumping and irrigation and

will greatly reduce and eventually destroy the surface water and the supply of underground and percolating waters, said subterranean streams and said water stratas now hereafter needed by plaintiffs and for the irrigation and sub-irrigation of their lands and for said other beneficial uses hereinbefore mentioned; that if such illegal and unlawful impounding, storage, diversions, transportation and use of said waters of said San Joaquin River by defendants are thus permitted to continue the time will eventually come when said underground and percolating waters, sub-streams and water stratas under said lands of plaintiffs will have become so depleted and the lowering of the water table so pronounced that it will be economically prohibitive to pump water to irrigate said lands of plaintiffs, and finally impossible to pump any waters to irrigate said lands of plaintiffs, and due to said lowering of said underground and percolating waters and said water stratas, said subterranean streams and said sub-irrigation caused as aforesaid, that said curtailment of said sources of replenishment of and lowering of the level of said underground and percolating waters, sub-streams and water stratas and said surface flow of said San Joaquin River will cause an influx of salt, alkali and destructive mineral bearing waters into and under lands of plaintiffs which will irreparably damage, destroy any trees, vines, crops, plants and grasses growing on said lands of plaintiffs and prevent the use of said lands of plaintiffs for agricultural purposes, and will destroy plaintiffs' domestic drinking

water supply, their cattle, animal and poultry drinking water supply and render all of plaintiffs' lands unfit for habitation; that by reason thereof plaintiffs will be deprived of their property without due process of law and their property taken for public use without just compensation, in violation of the V and XIV Amendments to the Constitution of the United States of America and Section 14 of Article I of the Constitution of the State of California; that at no time have the lands, waters, water rights or other property of plaintiffs herein mentioned been condemned or taken by legal process nor has legal compensation ever been received by plaintiffs nor offered by defendants therefor; that plaintiffs have no adequate remedy at law in the premises.

That said threatened and illegal impounding, storage and diversions aforementioned, will substantially retard and prevent the future development and intensification of the agricultural and cattle industries in said area and thereby will ultimately bring ruin and economic disaster to the ranches and farms of plaintiffs and will directly and adversely affect and curtail the progress and prosperity of the entire area in the watershed of said San Joaquin River; and indirectly of the entire State of California; that the said illegal and unlawful impounding, storage, diversion, transportation and use of said waters of said San Joaquin River by defendants and said threatened impounding, storage, diversion, transportation and use of said waters of said San Joaquin River by said defendants will forever destroy said major run of

Pacific Salmon, conservatively estimated at 200,000 fish annually which inhabit and spawn the waters of said San Joaquin River flowing in and over said lands of plaintiffs as aforesaid, and as a result a major fish supply of edible fish for California and the United States will be forever destroyed and will destroy said runs and schools of bass, trout, catfish and other edible fish and destroy plaintiffs' and others' rights and opportunities to fish therein and plaintiffs' and others' boating and recreation and said private and public picnic and recreational grounds and will stop the mining of said lands of plaintiffs for sand, rock and gravel and the creation and annual renewal and deposit of said sand, rock and gravel on said lands of plaintiffs which said deposits furnish and will furnish a part of the State of California with sand, rock and gravel and said plaintiffs a good income all to plaintiffs' irreparable damage.

X.

Than an actual controversy now exists between the defendants, on the one hand, and plaintiffs and said defendants on the other, with respect to the aforementioned waters, property and property rights involved in this case, to wit. the right to impound, store, divert, transport, use and sell the waters of said San Joaquin River, as aforesaid; that it is meet, proper and just that an adjudication be had and a declaration made by proper decree of the respective rights and duties of the parties in the premises.

XI.

That the question and subject matter involved in this case is one of common and general interest to many persons; that the aforementioned threatened and intended illegal acts of defendants will adversely affect and prejudice not only plaintiffs and their rights, but hundred of other ranchers and farmers whose lands abut or border and are riparian to the said San Joaquin River, or the owners of which lands have appropriative or prescriptive rights to use the waters of said San Joaquin River upon their lands, of which overlie the underground and percolating waters, water stratas and subterranean streams into which said San Joaquin River percolates, flows, seeps and feeds and which supports and sustains said underground and percolating waters, streams and stratas between Friant Dam and Mendota Dam on said San Joaquin River and whose interest in the subject matter in dispute is identical in whole or part with that of plaintiffs; that said parties are very numerous and that it is and will be impracticable to bring them all before the court; that said other landowners, as owners of land overlying the same common underground water resources, as aforesaid and as owners of lands bordering or abutting or riparian to said San Joaquin River and as owners of riparian, appropriative, prescriptive and other rights in and to the waters of the San Joaquin River system, are united in interest with plaintiffs; that for these reasons plaintiffs institute and prosecute this suit for their own benefit and for the benefit of all other land-

owners whose lands abut on or border the natural channel of said San Joaquin River or which overlie, underground and percolating waters and subterranean streams fed by sustained, supported, percolating or flowing from said San Joaquin River between said Friant and Mendota Dams. That the institution and prosecution of this suit as a class suit is not only meet and proper, as aforesaid, but likewise the granting of the relief sought herein will serve to prevent and obviate a multiplicity of actions; that it is highly important that a comprehensive and final adjudication be had, at as early a date as possible, of the extent of any surplus water, if any exists, the existence of which plaintiffs deny, which might be available from the San Joaquin River for diversion through the canals and other works of diversions of defendants away from and out of the watershed of said San Joaquin River to lands non-riparian to said San Joaquin River, to lands within the border of said defendant South San Joaquin Municipal Utility District, a public corporation, and for diversion to lands within the border of said defendant Madera Irrigation District, a public corporation; that in this way the irrigators of lands outside of the watershed of said San Joaquin River and within the boundary of said defendant Madera Irrigation District, a public corporation, and said defendant South San Joaquin Municipal Utility District, a public corporation, will know how much, if any, water can be reasonably expected to be made available through said source; that unless this is done, and if the plans announce-

ments and aforementioned intended illegal, unlawful and unauthorized acts and diversions of defendants are allowed to go unquestioned at present, great and extensive areas of arid lands, situated and lying outside the watershed of said San Joaquin River which are not now, and never have been, placed in cultivation or irrigated, will be cultivated and prepared for crops by farmers at great expense and in the expectation of receiving an adequate supply of irrigation water from said San Joaquin River and said hopes and expectations will be ultimately proved and determined to be without foundation; that said plaintiffs will be unable to proceed to clear and replant their wooded and brush lands and to plant their unirrigated pasture lands, and if said matters aforementioned are not completely and finally adjudicated in the near future in one comprehensive suit, a large number of lawsuits will ultimately be filed which will greatly and seriously impede the carrying out and achievement of the purposes and objects of said defendant Madera Irrigation District, a public corporation, said defendant South San Joaquin Municipal Utility District, a public corporation, and of said plaintiffs and their fellow landowners in this said paragraph mentioned; that plaintiffs are informed and believe and upon such information and belief allege that there are approximately 50,000 acres of land riparian to said San Joaquin River or which have valid and existing appropriative or prescriptive rights to the waters of said San Joaquin River and approximately 500,000 acres of land overlying the

underground and percolating waters, water stratas and subterranean streams fed by, sustained by, supplied by, upheld by and into which the said waters of San Joaquin River percolate, seep and flow between Friant and Mendota Dams.

XII.

That the defendants herein sued as John Doe Directors One to Two Hundred, John Doe Districts One to Forty, Richard Roe Directors One to Five, Richard Roe Irrigation District, and John Roe One to One Thousand are fictitious names of said defendants; that when the true names of said defendants are ascertained, plaintiffs pray leave of the court to insert their true names instead of their fictitious names.

XIII.

That ever since the said Friant Dam and the canals and diversion works hereinabove referred to were conceived of and announced, defendants and their predecessors in office and employment and their respective agents, continuously stated and represented to plaintiffs either directly or by public statements and testimony as follows:

That said defendants and their predecessors in office and employment and their agents during said time told plaintiffs that a large and better regulated flow of water would continue to flow down the said San Joaquin River from and below the proposed Friant Dam after its proposed construction and that sufficient water to sustain all fish life, recrea-

tional facilities, gravel operations, farming operations of plaintiffs and their domestic supplies would always continue to flow down stream out of and from said Friant Dam, and that they were required by law to continue the flow of the San Joaquin River used by fish and wild life; that plaintiffs are informed and believe and upon such information and belief allege that the original order of the Secretary of the Interior of the United States of America approved by the President of the United States of America, on or about December 2, 1935, contemplated said above-mentioned flow of water over and past the lands of plaintiffs and defendants so represented; that in all detailed plans of said Central Valley Project the same was contemplated and planned for, that said defendants and their predecessors in office and employment continuously represented since said time that the said proposed Friant Dam and works of diversion would furnish a better supply of water to plaintiffs than they then had and represented and stated to plaintiffs that they should not bring suit to protect their rights to the waters of said San Joaquin River; that filing of such a suit was unnecessary and would antagonize their Government and that plaintiffs had five years from each diversion from said San Joaquin River by defendants to protect themselves by legal action against each diversion, and that their Government would, of course, protect all of their rights and along with the rights of other citizens of California and the nation and give them greater rights and uses than they now had in

said waters of said River; that if plaintiffs did file suit the Government could and would immediately file, and threatened to file condemnation actions against them and take away all of their water and water rights, and that plaintiffs could not legally sue the Government anyway, and therefore any suit by them would be useless, that plaintiffs believed said statements since they were made by Government officials and agents, that plaintiffs are and were primarily interested in retaining their water and not in damages, and by reason thereof and the other reasons herein stated, did not file suit until the present time; that plaintiffs are informed and believe and upon such information and belief aver that said defendants, their predecessors in office and employment and their agents, employees and attorneys in court proceedings held in California and notably Merced and Sacramento since the announcement of the Central Valley's Project and continuously until the year 1947, publicly stated and testified in open court that the impounding and storage of water behind Friant Dam did not constitute a taking by the Government or any Governmental agency of any of the riparian or other rights of owners of riparian, appropriate and prescriptive rights to use the waters of said River below Friant Dam; that by reason thereof no statute of limitations or other defense were operating against plaintiffs and that plaintiffs and other appropriative, riparian and prescriptive owners still owned their rights to the waters of said San Joaquin River; that plaintiffs are farmers and are

not technical men and were not at any time familiar with the intricate plans and engineering data involved and relied on said defendants, their agents and predecessors in office and employment and their employees and agents and upon all of the statements in this paragraph contained; that except for such representations and statements of defendants and their predecessors in office and employment and their agents, plaintiffs would have immediately filed suit to protect all of their rights; that said defendants and their predecessors in office and employment continuously since 1935 told defendants that they could not stop the defendants in their above construction, impounding, storage, diversions and other activities and threatened any plaintiff who filed suit that they would lose their rights to the waters of said San Joaquin River by condemnation proceedings and would come to the homes of plaintiffs at all times of the day and night in large and threatening groups and harass plaintiffs whenever plaintiffs talked of taking any action to protect their rights or met in groups to discuss their rights in and to the waters of said San Joaquin River and generally misrepresented and distorted the rights to plaintiffs and the intentions of defendants in regard to the waters of said San Joaquin River; that not until July, 1947, did said defendants ever state or intimate that they claimed that they had already invaded or taken away part of the rights of plaintiffs or claim that they had taken any rights of plaintiffs in and to the waters of said San Joaquin River, or that any statute of limita-

tions or other legal bar to rights of plaintiffs were operating against plaintiffs, until letters were received from defendant Richard Boke purporting to act as Regional Director of said United States Bureau of Reclamation during the Month of July, 1947, a copy of which said letter to one of the plaintiffs herein, which is similar to the ones sent by defendant Richard Boke to other of its plaintiffs herein, as annexed as Exhibit "C" and expressly made a part hereof; that plaintiffs then immediately and on or about the 28th day of July, 1947, employed an attorney to file suit and protect their said rights; that all of the delay, if any, of plaintiffs or any of them in taking legal steps to protect their rights, if any delay there was, was caused by said misrepresentations and statements and actions of defendants and their predecessors in office and employment and their agents as servants of the Government of the United States of America and said justifiable reliance thereon by plaintiffs; that defendants and their predecessors in office and employment and their agents, on numerous occasions showed plaintiffs maps and drawings at various times which they represented were being made to establish plaintiffs' rights in and to the waters of said San Joaquin River; that defendants and their agents applied for permission to install certain water testing devices on lands of plaintiffs for the purpose as stated by defendants of determining how much water plaintiffs were using and entitled to and were given such permission and defendants stated that plaintiffs would always get at least that

amount of water; that defendants their predecessors in office and employment stated that in certain instances plaintiffs had no rights to part of the waters which they were using, but that if plaintiffs would not file suit they would not make a point of that; that for those before-mentioned matters plaintiffs would not have delayed taking immediate legal action to protect their rights in and to the waters of said San Joaquin River.

Wherefore, plaintiffs pray judgment against defendants as follows:

1. That defendants be forever enjoined from impounding and storing of the San Joaquin River waters behind Friant Dam and from making seasonal or cyclic storage of said waters behind Friant Dam and cyclic release of said waters from said Friant Dam.

2. That defendants be forever enjoined from diverting and transporting said waters of said San Joaquin River away to lands not riparian to said San Joaquin River, to lands, the owners of which have no riparian, prescriptive, appropriative or other rights to the waters of said San Joaquin River and to lands lying without the watershed of said San Joaquin River and from selling or entering into contracts for the sale of the waters of said San Joaquin River.

3. That in event the above-entitled court refuses the first two prayers hereinabove set forth and only in such event, then, in lieu thereof, that the above-entitled court make a physical solution of rights and claims of plaintiffs and other parties hereto

in and to the waters of said San Joaquin River as the term "physical solution" is used in the decisions of the Supreme Court of California.

4. That in event that the above-entitled court refuses the first three prayers hereinabove set forth, and only in that event, that the above-entitled court take steps, proceed and make its order in inverse condemnation as the term "reverse condemnation" is used in the decisions of the Supreme Court of the State of California and restrain the defendants from any of the acts herein sought to be enjoined pending the completion of such proceedings in inverse condemnation.

5. That all contracts heretofore entered into by any of the defendants purporting to sell or carry away or distribute any of the waters of said San Joaquin River in violation of the rights of plaintiffs and particularly the contract of said defendant South San Joaquin Municipal Utility District, a public corporation, and any agreement with said defendant Madera Irrigation District hereinabove referred to, be declared null and void and that defendants be restrained from entering into any further contracts for the diversion or sale of the waters of said San Joaquin River pending the determination by this court of the above matter.

6. For such other and further relief as may seem meet and equitable in the premises.

CLAUDE L. ROWE,
Attorney for Plaintiffs.

Duly Verified.

EXHIBIT "A"

Parcel I.

That certain real property located in the County of Fresno, State of California, described as follows:

Government Lots 4, 5, 6 and 7, and the S½ of the NE¼ of Section 10, and the NW¼ of Section 11, all in Township 12 South, Range 20 East, Mount Diablo Base and Meridian, according to the United States Government Township Plats, in the County of Fresno, State of California; and all lands contiguous thereto in the center of the San Joaquin River.

Parcel II.

That certain real property located in the County of Fresno, State of California, described as follows:

The W½ of the SW¼ of the SW¼ of Section 1, Township 12 South, Range 20 East, Mount Diablo Base and Meridian according to the United States Government Township Plats; and all lands contiguous thereto to the center of the San Joaquin River.

A portion of Lot 10 of Section 2, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, according to the United States Government Township Plats, bounded by the south and northwest lines of said Lot 10 and by a line commencing on said south line at a point at that distance from the angle formed by said south line and northwest line which when projected at right angles north to said northwest line includes 2.78

Exhibit "A"—(Continued)

acres, and no more. Also the E½ of the SE¼ of Section 2, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, according to the United States Government Township Plats; and all lands contiguous thereto to the center of the San Joaquin River: Except therefrom the following: Commencing at the southeast corner of the SE¼ of said Section 2; thence north 840 feet; thence west 800 feet; thence south 840 feet and thence east 800 feet to the point of commencement.

Parcel III.

That certain real property located in the County of Fresno, State of California, described as follows:

That portion of the SE¼ of the SE¼ of Section 2, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, according to the United States Government Township Plats, described as follows:

Commencing at the southeast corner of the SE¼ of said Section 2; thence north 840 feet; thence west 800 feet; thence south 840 feet and thence east 800 feet to the point of commencement; and all lands contiguous thereto to the center of the San Joaquin River.

Parcel IV.

That certain real property located in the County of Fresno, State of California, described as follows:

Lots 5 and 9 in Section 2 and Lot 9 in Section 3, in Township 12 South, Range 20 East, Mount Diablo Base and Meridian, according to the United

Exhibit "A"—(Continued)

States Government Township Plats; and all lands contiguous thereto to the center of the San Joaquin River.

Parcel V.

That certain real property located in the County of Madera, State of California, described as follows:

In Sections 20 and 21, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, the area described as follows: Beginning at an iron pipe which is S 61° 42′ W, 1131.4 feet from an iron pipe on the north line of said Section 21, which is 674.0 feet easterly from the northwest corner of said section; thence S 61° 42′ W, 268.6 feet to an iron pipe; thence S 50° 14′ W, 667.7 feet to an iron pipe; thence East parallel with and 1088.3 feet south of the north line of said section, a distance of 3148.8 feet, to an iron pipe; thence East to the intersection with the easterly boundary line of Lot 1 of said section; thence following the easterly boundary line of said Lot 1 northeasterly to a point which is 534.9 feet southerly at right angles from the north line of said section; thence West parallel with and 534.9 feet south of the north line of said section to an iron pipe; thence West a distance of 3132.3 feet to the point of beginning; and all lands contiguous thereto to the center of the San Joaquin River.

That portion of E½ of Section 9 lying in Madera County and NW¼, of NW¼ and Lots 1 and 2 in Section 10, Township 12 South, Range 20 East,

Exhibit "A"—(Continued)

Mount Diablo Base and Meridian; and all lands contiguous thereto to the center of the San Joaquin River.

Parcel VI.

That certain real property located in the County of Madera, State of California, described as follows:

In Section 17, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, Lots 1, 2, 3, 4, 5, 6, 7 and 8; and all lands contiguous thereto to the center of the San Joaquin River; less 4.84 ac. Co. Rd.

In Section 20, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, Lots 2, 9, 10 and 15, and all of Lots 1, 7 and 8; and all lands contiguous thereto to the center of the San Joaquin River; Except the area described as follows: A parcel of land in Section 20, Township 12 South, Range 20 East, described as beginning at an iron pipe which is S 61° 42′ W 1400 feet from a pipe on N line of Section 21 which is 674 feet easterly from NW corner of Section 21; thence N 70° 40′ W 428.6 feet; thence S 70° 32′ W 192.3 feet; thence S 5° 55′ W 235.8 feet; thence S 20° 14′ E 283.1 feet; thence N 50° 14′ E 667.7 feet to point of beginning.

In section 21, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, Lot 5; NW 2.32 ac. of NW¼ of NW¼; S 37.45 ac. of Lots 3 and 4; and all lands contiguous thereto to the center of the San Joaquin River.

In Sections 20 and 21, Township 12 South, Range

Exhibit "A"—(Continued)

20 East, Mount Diablo Base and Meridian, the area described as follows: Commencing at iron pipe which is South 50° 14′ West, 667.7 feet from an iron pipe which is South 6° 42′ West, 1400 feet from an iron pipe on the North line of Section 21, Township 12 South, Range 20 East, which is 674 feet Easterly from the Northwest corner of said Section 21; thence South 50° 14′ West, 192.3 feet; thence South 35° 31′ West 532.3 feet; thence East parallel with and 1643.9 feet South of North line of said Section 21 a distance of 3108.7 feet; thence East to the intersection with the Easterly boundary line of Lot 3 of said Section 21; thence Northeasterly following the Easterly boundary line of Lots 3 and 1 of said Section 21 to a point which is 10888.3 feet Southerly at right angles from the North line of said Section 21; thence West parallel with and 1088.3 feet South of North line of said Section 21 to an iron pipe; thence West a distance of 3148.8 feet to the point of commencement; and all lands contiguous thereto to the center of the San Joaquin River.

Parcel VII.

That certain real property located in the County of Madera, State of California, described as follows:

In Section 16, Township 12 South, Range 20 East, Mount Diablo Base and Meridian; SE¼ of SW¼ and that portion of SE¼ lying W of San Joaquin River; and all lands contiguous thereto to the center

Exhibit "A"—(Continued)

of the San Joaquin River; less 7.58 ac. Highway off W side of SE¼.

A parcel of land in Section 20, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, described as beginning at an iron pipe which is S 61° 42′ W, 1400 ft. from a pipe on W line of Section 21 which is 674 feet Easterly from NW corner of Section 21; thence N 70° 40′ W, 428.6 feet; thence S 71° 32′ W, 192.3 feet; thence S 5° 35′ W, 235.8 feet; thence S 20° 14′ E, 283.1 feet; thence N 50° 14′ E, 667.7 feet to point of beginning; and all lands contiguous thereto to the center of the San Joaquin River.

Parcel VIII.

That certain real property located in the County of Fresno, State of California, described as follows:

Lot 16, Section 9, Township 12 South, Range 20 East, Mount Diablo Base and Meridian; and all lands contiguous thereto to the center of the San Joaquin River.

W½ of SW¼ of NW¼; SW¼ of NW¼ of NW¼, Section 13, Township 12 South, Range 20 East, Mount Diablo Base and Meridian; and all lands contiguous thereto to the center of the San Joaquin River.

In Section 16, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, Lot 7; portion of Lot 6 described as: Commencing at NE corner of said lot; thence S 20 rds; thence W 40 rds; thence S 20 rods; thence W to U. S. Seg. line;

Exhibit "A"—(Continued)

thence Northwesterly to N line of said lot; thence E to commencement; and all lands contiguous thereto to the center of the San Joaquin River; less S 12 rds. frontage on County Road, running E from SW corner of said tract; also less portions of Lots 6 and 7, lying W of County Road.

In Section 16, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, portion of Government Lots 6 and 7 in NE¼, lying W of road; and all lands contiguous thereto to the center of the San Joaquin River; less any portion lying S of a line drawn 120 rds. S of and parallel to N line of Section 16.

That certain real property located in the County of Madera, State of California, described as follows:

In Sections 20 and 21, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, Commencing at an iron pipe on the N line of Section 21 which is 674.0 ft. Easterly from the NW corner of said Section 21; thence S 61° 42′ W 1131.4 feet; thence E parallel with and 534.9 feet S of the N line of said Section 21, a distance of 3132.3 feet; thence E to the intersection with the Easterly boundary line of Lot 1 of said Section 21; thence Northeasterly following the Easterly boundary line of said Lot 1 to the NE corner of said Lot 1; thence W along the N line of said Section 21 to an iron pipe; thence W a distance of 3094.0 feet to the point of commencement; and all lands contiguous thereto to the center of the San Joaquin River; less

Exhibit "A"—(Continued)

1.48 ac. in Section 21 to the State of California for road purposes.

Parcel IX.

That certain real property located in the County of Madera, State of California, described as follows:

In Section 30, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, Lot 12, also all that land lying between the Westerly line of said lot and the San Joaquin River: Lots 7 and 9 of Walker Ranch; and that portion of Lot 3 of Walker Ranch, containing 6.62 acres described as follows: Beginning at the northeast corner of Lot 7 of said Walker Ranch; thence North 200 feet; thence at right angles West and parallel with the North line of said Lot 7, 1504 feet to a point; thence at right angles south to Southerly line of said Lot 3, being the line dividing said Lot 3 from Lot 8 of said tract; thence in a Southeasterly direction along the line dividing said Lot 3 from Lot 8 of said tract to the Northwesterly corner of said Lot 7; thence east along the North line of said Lot 7 to the point of beginning; and all lands contiguous thereto to the center of the San Joaquin River. All above Walker Ranch lots as shown on "Map of Walker Ranch" recorded May 12, 1919, in Book 4, pages 51 and 52 of maps, Madera County Records.

Also right of way over a strip of land 30 feet wide off of and over West side of Lot 5 in Section 30, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, extending from Bluff

Exhibit "A"—(Continued)

to the River Northwesterly and Southeasterly through said Lot 5, along river to San Joaquin River leading to said Lot 12; and all lands contiguous thereto to the center of the San Joaquin River.

Parcel X.

That certain real property located in the County of Fresno, State of California, described as follows:

Lot 13, Section 35, Township 11 South, Range 20 East, Mount Diablo Base and Meridian; and all lands contiguous thereto to the center of the San Joaquin River.

Lots 9 and 10, Section 1, Township 12 South, Range 20 East, Mount Diablo Base and Meridian; and all lands contiguous thereto to the center of the San Joaquin River.

Lot 11, Section 2, Township 12 South, Range 20 East, Mount Diablo Base and Meridian; and all lands contiguous thereto to the center of the San Joaquin River.

Lot 10, Section 2, Township 12 South, Range 20 East, Mount Diablo Base and Meridian; and all lands contiguous thereto to the center of the San Joaquin River; less 2.78 acres in SW corner in Section 2, Township 12 South, Range 20 East.

Lot 6, Section 12, Township 12 South, Range 20 West, Mount Diablo Base and Meridian; and all lands contiguous thereto to the center of the San Joaquin River.

Lots 7 to 10; Portion of Lot 6, lying West of Canal in Section 29, Township 12 South, Range

Exhibit "A"—(Continued)

20 East, Mount Diablo Base and Meridian; and all lands contiguous thereto to the center of the San Joaquin River.

That portion of Government Lot 3 and that portion of Lot 299, Perrin Colony No. 2, lying N and W of a line described as: Beginning in North line of Section 32, 1811 feet West from Northeast corner thereof, said point being in center of upper San Joaquin Canal; thence following said line South 35° 30′ West 316 feet; thence South 62° 20′ West 130 feet; thence South 31° 23′ West 165 feet; thence South 74° 29′ West 540 feet; thence South 72° 47′ West 600 feet; thence South 67° 39′ West 400 feet; thence leaving said Canal North 80° 20′ West 232 feet to Southerly water edge of San Joaquin River; Section 32, Township 12 South, Range 20 East, Mount Diablo Base and Meridian; and all lands contiguous thereto to the center of the San Joaquin River.

Perrin Colony No. 2: Lots 269 to 274, lying West of Canal, Section 28, Township 12 South, Range 20 East, Mount Diablo Base and Meridian; and all lands contiguous thereto to the center of the San Joaquin River.

Perrin Colony No. 2: Portion of Lots 273, 274 described as: Beginning at a point 1406.8 feet North 0° 04′ East of corner common to Sections 28, 29, 32, 33; thence North 40° 41′ East 621.5 feet; thence North 28° 04′ East 362.5 feet; thence North 51° 17′ West 100 feet; thence North 71° 34′ West 131.75 feet to a point in center line of Old San Joaquin

Exhibit "A"—(Continued)

Canal; thence along center of Canal South 15° 06' West 352 feet; thence South 40° 16' West 434.5 feet; thence South 0° 04' West 224.1 feet to beginning, Section 28, Township 12 South, Range 20 East, Mount Diablo Base and Meridian; and all lands contiguous thereto to the center of the San Joaquin River.

Perrin Colony No. 2: Lots 285 to 287; Portion of Lots 288 to 290, lying West of Canal; Section 29, Township 12 South, Range 20 East, Mount Diablo Base and Meridian; and all lands contiguous thereto to the center of the San Joaquin River.

EXHIBIT "B"

United States
Department of the Interior
Bureau of Reclamation

Contract for the Furnishing of Water to South San Joaquin Municipal Utility District

1. This Contract, made this 5th day of October, 1945, in pursuance generally of the Act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, and particularly the acts of Congress approved August 26, 1937 (50 Stat. 844, 850), entitled "An Act authorizing the construction, repair and preservation of certain public works on rivers and harbors, and for other purposes," as amended, and August 4, 1939, (53 Stat. 1187), entitled "Reclamation Project Act,

Exhibit "B"—(Continued)

1939," all collectively herein styled the Federal Reclamation Law, between The United States of America, herein styled the "United States," represented by the Secretary of the Interior, and the South San Joaquin Municipal Utility District, a political subdivision of the State of California, duly organized and existing pursuant to the laws thereof, with its principal place of business in the City of Delano, State of California, herein styled the "District":

Witnesseth That:

Explanatory Recitals

2. Whereas, the United States is constructing the Central Valley Project for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, generation and distribution of electric energy, salinity control, navigation, and other purposes, of waters of the Sacramento River and San Joaquin River and their tributaries; and

3. Whereas, the United States proposes to construct and operate the Friant-Kern Canal, which canal will be used, in part, for the furnishing of water to the District pursuant to the terms of this contract; and

4. Whereas, the District desires to contract, pursuant to the Federal Reclamation Law, for the furnishing by the United States of a water supply from the Project for which the District will make payment to the United States upon the basis, at the

Exhibit "B"—(Continued)

rates, and pursuant to the conditions hereinafter set forth; and

5. Whereas, investigations of the District lands and present water supply indicate that irrigated and irrigable lands within the boundaries of the District are at present in need of additional water for irrigation and certain areas have a potential need of water for irrigation, and that ground water underlying the District is seriously depleted and in need of replenishment and that a supplemental water supply to meet these present and potential needs can be made available by and through the works constructed and to be constructed by the United States; and

6. Whereas, investigations of the stream flow in the Sacramento River and the San Joaquin River and their tributaries indicate that there will be available for furnishing to the District a supplemental water supply for surface diversion and direct application for irrigation; and

7. Whereas, said investigations further indicate that, dependent on the annually varying stream flow, there may be available for furnishing to the District, by means of Friant-Kern Canal, an additional quantity of water, over and above the quantity which it is anticipated will be available in said Canal for surface diversion for irrigation each and every year, which additional quantity, due to the variation in its availability, can best be used to replenish the depleted ground waters underlying the District.

Exhibit "B"—(Continued)

8. Now, Therefore, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed by the parties hereto as follows:

Definitions

9. When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the term:

(a) "Secretary" or "contracting officer" shall mean the Secretary of the United States Department of the Interior or his duly authorized representative.

(b) "Project" shall mean the Central Valley Project, California, of the Bureau of Reclamation.

(c) "Initial delivery date" shall mean the date, announced by the Secretary, on which water will be available for furnishing to the District by means of the Friant-Kern Canal pursuant to the terms of this contract.

(d) "Year" shall mean the period from and including March 1 of each calendar year through the last day of February of the following year.

(e) "Calendar year" shall mean the period from January 1 through December 31, both dates inclusive.

Term of Contract

10. This contract shall become effective from the date first hereinabove written and shall continue in

Exhibit "B"—(Continued)

effect for thirty-nine (39) years after the year in which the initial delivery date occurs.

Water to Be Furnished to District

11. The United States shall furnish to the District from Friant-Kern Canal, and the District shall accept and pay for:

(a) 91,000 acre-feet of water, herein referred to as Class 1 water, during each year after the initial delivery date and until the termination of this contract, Provided, That the District may, at any time or times within fifteen years of the initial delivery date, upon written notice to the United States increase the amount of Class 1 water required thereafter to be sold and delivered each year to the District by the United States during the remainder of the term of this contract, but in no event shall the total amount of Class 1 water required to be so furnished and delivered in any year be in excess of ..... acre-feet.

(b) Such amounts of water each year, herein referred to as Class 2 water, in addition to Class 1 water in the preceding subdivision (a) of this article provided for, as do not exceed whichever is the lesser of the following:

(i) ..... acre-feet of such Class 2 water, or

(ii) .... per cent of the total quantity of such Class 2 water delivered into the ..... Canal during the year, or

(iii) the amount of such Class 2 water avail-

Exhibit "B"—(Continued)

able for delivery to the District at the time or times for such delivery notwithstanding any prior estimate of availability, all as the same may be conclusively determined by the contracting officer;

Provided, However, That the District shall not be obligated to accept more than ..... acre-feet of such Class 2 water during any period of thirty consecutive calendar days, and, Provided further, That at the end of each period of five calendar years during the life of this contract the maximum quantity of Class 2 water required to be accepted and paid for by the District pursuant to this article may be increased or decreased for the ensuing period of five calendar years, or portion thereof within the then remaining life of this contract, if the District and the contracting officer find that such increase or decrease is necessary or desirable to lower or raise the ground-water table underlying the lands of the District.

Time for Delivery of Water

12. (a) On or before February 15 of each calendar year the contracting officer shall, by written notice to the District, announce the quantity of Class 2 water, estimated to be available for delivery to the District during the year. If at any time or times during the year the contracting officer revises the aforesaid estimate he shall so notify the District, and, subject to the provisions of Article 11(b) of this contract, the District shall be obligated

Exhibit "B"—(Continued)

to accept delivery of all such Class 2 water delivered to the points of delivery specified in Article 15 hereof.

(b) The District shall submit in writing to the contracting officer on or before March 1 of each calendar year a schedule, subject to the provisions of Article 11 hereof and satisfactory to the contracting officer, indicating the desired times and quantities for the delivery of all Class 2 water pursuant to this contract during the following year and the United States shall within the provisions hereof, attempt to deliver said water in accordance with said schedule as nearly as may be feasible as conclusively determined by the contracting officer.

Rate and Method of Payment for Water

13. (a) The contracting officer shall, on or before February 15 of each calendar year, by written notice, notify the District of the rates of payment to be made by the District for all water to be delivered to it pursuant to this contract during the ensuing year, but in no event shall the rates announced by the contracting officer be in excess of $3.50 per acre foot for Class 1 water and $1.50 per acre foot for Class 2 water.

(b) The District shall, each year in advance of the delivery of water for said year, make payments to the United States for all water to be furnished to the District pursuant hereto, at rates fixed as in the preceding subdivision (a) of this article provided, at the times and in the manner as follows:

Exhibit "B"—(Continued)

(i) For all Class 1 water which the District is required to receive pursuant to the provisions of Article 11(a) hereof, and for all Class 2 water the availability of which has been therefore announced by the contracting officer. Such payments by the District shall be made on or before March 1 or such other date, prior to the time for commencement of delivery of such water, of the respective year as may be specified by the contracting officer in written notice to the District;

(ii) For all of Class 2 water actually available in excess of that originally announced, pursuant to the first sentence of Article 12(a) hereof, as estimated to be available and which the District by the provisions hereof is required to receive, such payments by the District shall be made on or before the date as announced by the contracting officer that delivery of such additional Class 2 water will be commenced; and

(iii) For all Class 2 water in excess of that which the District, by the provisions of this contract is required to receive and the delivery of which is requested by the District subject to a determination of its availability as elsewhere herein provided, payment therefor shall be tendered by the District with its request for such additional Class 2 water, and an adjustment on account of any such payment so tendered, to the extent that any request for such

Exhibit "B"—(Continued)

excess quantity of Class 2 water shall not have been fulfilled by the end of the year shall be made in a manner similar to that provided for in Article 14 hereof.

(c) In the event the District fails or refuses to accept delivery of the quantities of water available for delivery and required to be accepted by it pursuant to this contract, or in the event the District fails to submit a schedule for delivery as provided in Article 12(b) of this contract said failure or refusal shall not relieve the District of its obligation to pay for said water and the District agrees to make payment therefor in the same manner as if said water had been delivered to and accepted by it in accordance with this contract.

Adjustments for Class 2 Water

14. The amount of any overpayment by the District by reason of the quantity of Class 2 water actually available during any year, as conclusively determined by the contracting officer, having been less than the quantity of such water which the District otherwise under the provisions of this contract would have been required to receive and pay for, shall be applied first to any accrued indebtedness arising out of this contract then due and owing to the United States by the District and any amount of such overpayment then remaining shall, at the option of the District, be refunded or credited upon amounts to become due to the United States from the District under the provisions of this contract in the ensuing year.

Exhibit "B"—(Continued)
Point of Delivery, Measurement and
Responsibility for Distribution of Water

15. (a) The water to be furnished to the District pursuant to this contract will be delivered at Friant-Kern Canal at such points within the boundaries of the District as may be mutually agreed upon by the contracting officer and the District: Provided, however, That in the event that the United States shall have reached the construction of the portion of the Friant-Kern Canal, which probably will embrace such points, and the location has not been so agreed upon such points shall be established at locations as, in the conclusive determination of the contracting officer will best serve the needs of the District.

(b) All water delivered pursuant to this contract shall be measured by the United States at each point of delivery established pursuant to subdivision (a) of this article and with equipment installed, operated, and maintained by the United States, and the contracting officer's determination as to such measurement shall be final.

(c) The quantity of Class 2 water available to be furnished to the District in any year, within the amount which the District by the provisions of this contract is required to receive and pay for, whether or not the whole of such quantity actually shall have been delivered to and received by the District, shall be conclusively determined by the contracting officer.

Exhibit "B"—(Continued)

(d) The United States shall not be responsible for the control, carriage, handling, use, disposal or distribution of water which may be furnished to the District hereunder, beyond the respective points of delivery on the Friant-Kern Canal in subdivision (a) of this article provided for and the District shall hold the United States harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility including property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal or distribution of such water beyond the said points on the Friant-Kern Canal: Provided, however, That nothing herein shall be construed as an abandonment or relinquishment by the United States of any waste, seepage or return flow water derived from water furnished hereunder by the United States but the same, except that used pursuant to this contract by the District or those claiming by, through or under the District, is reserved and intended to be retained by the United States as a part of the project water supply.

United States Not Liable for Water Shortage

16. On account of drouth, inaccuracy in distribution or other causes, there may occur at times a shortage during any year in the quantity of water available for furnishing to the District by the United States pursuant to this contract through and by means of the project and in no event shall any

Exhibit "B"—(Continued)

liability accrue against the United States or any of its officers, agents or employees for any damage, direct or indirect, arising therefrom. In no event shall the United States deliver in any year Class 2 water pursuant to this or any other contract heretofore or hereafter entered into involving the same project water supply, until the contracting officer shall have determined that the quantity of Class 1 water required to be delivered to the District hereunder and to others under any such other contract will be available for delivery in said year. In any year in which there may occur a shortage, described in the first sentence of this article, the United States reserves the right to apportion the available water supply among the District and others, under existing and future contracts, entitled to receive Class 1 water from the same project water supply. In the event that in any year there is delivered to the District, by reason of any such shortage or apportionment, less than the quantity of water which the District otherwise would be entitled to receive hereunder, there shall be made an adjustment on account of the amounts paid to the United States by the District for Class 1 water for said year, in a manner similar to that provided for in Article 14 hereof, to the extent of such deficiency and such adjustment shall constitute the sole remedy of the District or anyone having or claiming to have by, through, or under the District, the right to the use of any of the water supply provided for herein. The United States does not guarantee the sale and delivery of

Exhibit "B"—(Continued)

any Class 2 water and such Class 2 water will be furnished and delivered to the District only if, as and when said water is available for delivery to the District as conclusively determined by the contracting officer.

Agreed Charges a General Obligation of the District

17. The District as a whole is obligated to pay to the United States the charges becoming due as a result of this contract, notwithstanding the individual default in the payment to the District by individual water users of assessments, tolls, or other charges levied by the District. Insofar as consistent with the laws of the State of California, the obligation of the District under this contract shall constitute a lien upon all land and improvements situated within the District.

All Benefits Conditioned Upon Payment

18. Should any assessment or assessments required by the terms of this contract and levied against any tract of land, or water user in the District be judicially determined to be irregular or void, or the District or its officers be enjoined or restrained from making or collecting any assessments upon such land as provided for herein, then such tract shall have no right to any of the benefits of this contract, and no water sold to the District by the United States shall be delivered to or for such tract of land, notwithstanding the existence of

Exhibit "B"—(Continued)

a contract between the District and the owner or owners of such tract requiring such delivery, and all contracts executed by the District shall so provide. Should the District fail to levy or collect the necessary taxes and assessments to pay to the United States the amounts required to be paid pursuant hereto, or should any such levy of taxes or assessments made by the District be judicially determined to be irregular or void, then the Secretary may proceed to assess the appropriate charges for the use of water in the manner provided in the Federal Reclamation Laws, and may require payment thereof as a condition precedent to the delivery of water, or may himself make an apportionment of any such charges among the various users of water in the District and may issue public notices to the full extent authorized under said Federal Reclamation Laws; and the Secretary may, by notice to the District, require that no water furnished pursuant to this contract by the United States shall be delivered to or for any tract or tracts of land or water users in the District until such charges have been paid or prepaid to the United States in accordance with the terms and conditions provided for herein, or in the said public notices thereafter issues. Contracts, if any, between the District and the water users for the use and distribution of the water from the said project shall provide that such use and distribution shall be subject to the terms of this contract. It is further agreed that the payment of charges at the rates

Exhibit "B"—(Continued)

and upon the terms and conditions provided for herein, is a prerequisite to the right to receive water delivered to the District by the United States; and on irregularity in levying taxes or assessments by the District, nor lack of authority in the District, whether affecting the validity of District taxes or assessments or not, shall be held to authorize or permit any water user of the District to demand or receive water to be made available to the District pursuant to this contract, unless charges at the rates and upon the terms and conditions provided for herein have been paid by such water user.

Levy of Taxes and Assessments—Fixing of Rates and Tolls

19. The District shall cause to be levied and collected all necessary taxes and assessments and cause to be fixed or established all necessary charges, rates and tolls and shall use all powers and resources of the District, including the taxing power of the District, or the power to levy special assessments and the power to withhold delivery of water, shall collect and pay to the United States and make payments promptly on the due dates thereof of all amounts which the District by the provisions of this contract shall be obligated to pay to the United States. To the extent that it is permitted by the laws of the State of California assessments levied by the District to meet the obligations of this contract shall be on an ad valorem basis. The District shall require advance payment by the landowners

Exhibit "B"—(Continued)

and those using water for any purpose from the District's supply as a condition to the delivery of water by the District and it may, either or both, require the payment of toll charges or levy assessments for such water service.

Refusal of Water in Case of Default

20. No water shall be delivered to the District or by the District to or for the use of any lands or parties therein during any period in which the District may be in arrears in a payment of charges accruing under this contract. No water shall be delivered by the United States to the District for lands or parties which are in arrears in the payment to the District of any assessments, rates, tolls, or charges of the District levied or established by the District for the purpose of raising revenues to meet the payment by the District to the United States of the District's obligation under this contract. The provisions of this article are not exclusive and action taken pursuant hereto shall not prejudice or preclude the United States from exercising any other remedy to enforce collection of any amounts due hereunder.

Penalty Upon Delinquency in Payment

21. Upon each charge to be paid by the District to the United States pursuant to this contract, which shall remain unpaid after the same shall become due and payable, there shall be imposed a penalty of one-half (½) of one (1) per cent per

Exhibit "B"—(Continued)

month of the amount of such delinquent payment from and after the date when same becomes due until paid, and the District hereby agrees to pay said penalty: Provided, however, that no penalty shall be chargeable against the net amount of any adjustment provided for in Articles 13, 14 and 16 hereof.

District to Keep Books and Records and Report Crop and Other Data

22. To such extent and in such manner and form as may be prescribed by the Secretary, the District shall establish and maintain account and other books and records and furnish to the Secretary reports and statements as to information contained therein pertaining to (a) accounts and financial transactions of the District, (b) crops raised and agricultural or livestock products produced on the lands within the District, a report thereon to be furnished to the Secretary annually on or before December 31, or such other date or dates as may be fixed by the Secretary.

Inspection of Books and Records

23. Subject to applicable Federal laws and regulations, the proper officers or agents of the District shall have full and free access at all reasonable times to the project account books and official records of the Bureau of Reclamation, insofar as the same pertain to the matters and things provided for in this contract, relating to the construction,

Exhibit "B"—(Continued)

acquisition, care, operation and maintenance of the project works, with the right at any time during office hours to make copies thereof, and the proper representatives of the United States shall have similar rights in respect to the account books and records of the District.

Changes in Organization of District

24. (a) While this contract is in effect no change will be made in the District either by inclusion or exclusion of lands, by partial or total consolidation or merger with another district, by proceedings to dissolve, or otherwise, except upon the contracting officer's written assent thereto.

(b) In the event lands are annexed to the District as provided herein, the parties hereto may by supplemental agreement either or both increase the quantity of Class 1 water which is to be furnished to the District or the maximum quantity of Class 2 water which the District is required to receive and pay for pursuant to this contract.

Lands Not to Receive Water Until Owners Thereof Execute Certain Contracts

25. No water shall be delivered to any excess lands, as defined in Article 27 hereof unless the owners thereof shall have executed valid recordable contracts in form satisfactory to the Secretary, agreeing to the provisions of this contract between the United States and the District; agreeing to the appraisal provided for in Article 26 hereof and

Exhibit "B"—(Continued)

that such appraisal shall be made on the basis of the actual bona fide value of such lands at the date of the appraisal without reference to the construction of the Project, all as hereinafter provided; and agreeing to the sale of such lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed by the Secretary, as hereinafter provided. No sale of any such lands shall carry the right to receive water made available hereunder unless and until the purchase price involved in such sale is approved by the Secretary and upon proof of fraudulent representation as to the true consideration involved in such sales the Secretary may instruct the District by written notice to refuse to deliver any water subject to this contract to the land involved in such fraudulent sales and the District thereafter shall not deliver said water to such lands.

Valuation and Sale of Excess Lands

26. (a) The value of the irrigable lands within the District, held in private ownership of large landowners as defined in the next succeeding article hereof, for the purposes of this contract, shall be determined, subject to the approval thereof by the Secretary, by three appraisers. One of said appraisers shall be designated by the Secretary and one shall be designated by the District and the two appraisers so appointed shall name the third. If the appraisers so designated by the Secretary and the District are unable to agree upon the appoint-

Exhibit "B"—(Continued)

ment of the third, they shall so advise the Secretary and the District and the designation of the third appraiser shall then be made by the Secretary.

(b) The following principles shall govern the appraisal:

(i) No value shall be given such lands on account of the existing or prospective possibility of securing the water from the project.

(ii) The value of improvements on the land at the time of said appraisal shall be included therein, but shall also be set forth separately in such appraisal.

(c) The cost of the appraisal shall be paid by the United States.

(d) Any improvements made or placed on the appraised land after the appraisal hereinabove provided for prior to sale of the land by a large landowner may be appraised in like manner, and the same shall be subject to approval by the Secretary or his authorized representative.

(e) Future sales or irrigable lands of large landowners under the project shall not carry the right to receive water made available hereunder for such land and the District agrees to refuse to deliver water to land so sold until, in addition to compliance with the other provisions hereof:

(i) A verified statement showing the sale price upon any such sale shall have been filed with the District; and

(ii) There shall have been complied with by the landowner such reasonable rules and regu-

Exhibit "B"—(Continued)

lations as may now or hereafter be promulgated by the Secretary for the better administration and enforcement of the Reclamation Law and of the provisions hereof, which may include, among others, the requirement that prior to delivery of water to any District lands acquired from a large landowner, the owner thereof shall furnish the District with an affidavit describing in detail the affiant's purchase of such lands made prior thereto.

(f) The District agrees, by all reasonable means, including the quarterly examination of county records or procurement of necessary title abstract service and otherwise, to ascertain the occurrence and conditions of all sales of irrigable land of large landowners in the District and to inform the Secretary or his authorized representative in charge of the project, concerning the same.

(g) A true copy of this contract and of each appraisal made pursuant thereto shall be maintained on file in the office of the District and like copies in such principal office of the Bureau of Reclamation as may be established hereafter in connection with the project and shall be made available for examination during the usual office hours by all persons who may be interested therein.

Excess Lands

27. (a) As used herein the term "excess land" means that part of the irrigable land within the District in excess of 160 acres held in the beneficial

Exhibit "B"—(Continued)

ownership of any single person; or in excess of 320 acres held in the beneficial ownership of husband and wife jointly, as tenants in common or by the entirety, or as community property; the term "large landowner" means an owner of excess lands and the term "nonexcess land" means all irrigable land under the project which is not excess land as defined herein.

(b) Each large landowner as a further condition precedent to the right to receive water for any of his excess lands shall:

(i) Before the initial delivery date or before the expiration of six months from the announcement thereof, whichever occurs first, execute a valid recordable contract in form satisfactory to the Secretary, agreeing to the provisions herein contained and agreeing to dispose of his excess lands in accordance therewith to persons who can take title thereto as nonexcess land as herein provided and at a price not to exceed the approved, appraised value of such excess land and within a period of ten years after the date of the execution of said recordable contract and agreeing further that if said land is not so disposed of within said period of ten years the Secretary shall have the power to dispose of said land subject to the same conditions on behalf of such large landowner subject to conditions all as herein provided; and the District agrees that it will refuse to deliver water to any large landowner other than for

Exhibit "B" (Continued)

his nonexcess lands until such owner meets the conditions precedent herein stated.

(ii) Within thirty days after the date of notice from the United States requesting such large landowner to designate his irrigable lands under the project which he desires to designate as nonexcess lands, file in the office of the District, in duplicate, one copy thereof to be furnished by the District to the Bureau of Reclamation, his written designation and description of lands so selected to be nonexcess lands and upon failure to do so the District shall make such designation and mail a notice thereof to such large landowner, and in the event the District fails to act within such period of time as the contracting officer considers reasonable, such designation will be made by the contracting officer who will mail a notice thereof to the District and the large landowner. The large landowner shall become bound by any such action on the part of the District or the contracting officer and the District will deliver water only to the land so designated to be nonexcess land.

Rules and Regulations

28. There is reserved to the Secretary, but not to his representative, other than an Acting Secretary of the Interior or the Commissioner of Reclamation, the right so far as the purport thereof may be consistent with the provisions of this contract,

Exhibit "B"—(Continued)

to make rules and regulations and to add to and modify them, as may be deemed proper and necessary to carry out this contract and to supply necessary details of its administration, and the District agrees to observe such rules and regulations.

Secretary Arbiter of Disputes Involving Questions of Fact

29. In the event of disputes between the parties hereto arising out of this contract involving questions of fact, and insofar as the provisions hereof require a determination of fact to be made, the Secretary is hereby designated as the arbiter of such questions and as the one required to make, or when made by his duly authorized representative pursuant to this contract, to review such determination of facts on written appeal therefrom by the District to the Secretary filed within thirty days after notice to the District of such determination; and the Secretary's decision thereon shall be conclusive and binding upon the parties hereto.

Contingent Upon Appropriations or Allotments of Funds

30. The expenditure of any money or the performance of any work by the United States herein provided for which may require appropriations of money by Congress or the allotment of funds, shall be contingent upon such appropriations or allotments being made. The failure of Congress so to appropriate funds or the failure of an allotment

Exhibit "B"—(Continued)

of funds shall not relieve the District from any obligations under this contract and no liability shall accrue to the United States in case such funds are not so appropriated or allotted.

Construction of Facilities by United States

31. Notwithstanding any provision of this contract to the contrary, the United States shall not be obligated to furnish water to the District hereunder unless and until the construction by the United States of the facilities required for furnishing of said water to the District has been completed as conclusively determined by the contracting officer.

Officials Not to Benefit

32. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

Notices

33. Any notice or announcement which the provisions hereof contemplate shall be given to one of the parties hereto by the other shall be deemed to have been deposited in the United States Post Office, on the part of the United States in a franked envelope addressed to the District at its office and on the part of the District in a postage prepaid envelope addressed to the Bureau of Reclamation,

Exhibit "B"—(Continued)

Department of the Interior, Sacramento, California, or such other address as from time to time may be designated by the Secretary in a written notice to the District: Provided, however, that this article shall not preclude the effective service of any such notice or announcement by other means.

Assignment Prohibited: Successors and Assigns Obligated: Default

34. The provisions of this agreement shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this contract or any part thereof or interest therein shall be valid until and unless approved by the Secretary. The United States reserves the right, at its option, to terminate this contract on sixty days' written notice to the District (1) in the event that a court of competent jurisdiction hereafter shall have declared this contract in whole or in part to be ultra vires or invalid as to the District and (2) upon the failure of the District for two or more successive or cumulative years to make the payments herein required to be made to the United States by the District at the times and in the manner herein provided. Upon the effective date of such termination all obligations of the United States and all rights of the District, of any nature whatsoever arising under this contract, shall cease but such termination shall not relieve the District of the obligation to make to the United States all payments becoming due prior to the effective date of

Exhibit "B"—(Continued)

such termination. Any waiver at any time by the United States of its rights with respect to a default, or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any subsequent default or matter. All rights of action for breach of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States as amended (41 U.S.C. 15). No sale or other disposal by the District for use outside the District, of any water, or the right to the use thereof, furnished to the District pursuant to this contract shall be valid without the Secretary's written consent thereto.

In Witness Whereof the parties hereto have hereunto affixed their names the day and year first hereinabove written.

THE UNITED STATES OF AMERICA,

By /s/ HAROLD ICKES,
Secretary of the Interior.

SOUTH SAN JOAQUIN MUNICIPAL UTILITY DISTRICT,

By /s/ MILO MARSHALL,
President;

By /s/ EDWIN JACOBSEN,
Secretary.

EXHIBIT "C"

Department of the Interior
Bureau of Reclamation
Sacramento 10, California
P. O. Box 2511
Region 2

July 15, 1957.

In reply refer to: LE
Mr. L. D. Cobb,
Rt. 1, Box 570,
Fresno, California.

My dear Mr. Cobb:

The Bureau of Reclamation has offered to you, or to you predecessors in interest, a proposition for adjustment of water rights respecting the land which, for convenience, is referred to in our records as Holding No. 49 in the Friant to Gravelly Ford area. This offer was based upon a careful investigation of the actual or probable effect of the operation of Friant Reservoir on the use of that land.

Most of the landowners in this area who were offered settlements based upon identical principles of investigation, analysis and appraisal have accepted our offers and many of them already have been paid. However, it appears that our offer concerning your holding has not been accepted.

The purpose of this letter is to notify you of the desirability of taking definite action on this offer as promptly as possible, in order that its acceptance

Exhibit "C"—(Continued)

may be processed, or that if it should be rejected, you would not be left without legal protection.

As you may know, it has been claimed by some that a taking of water rights occurred by the operation of Friant Dam on or about October 21, 1941. If that be true respecting your holding, any claim which you have will be barred, as a matter of law, by October 20, 1947, unless it is previously preserved by the execution of a contract or by the institution of litigation. If not so preserved, the United States will be powerless to contract for any adjustment after that date. If a contract is to be executed, therefore, sufficient time should be allowed in advance of October 20, 1947, within which to secure title information and to perform the work required in securing the execution of the contract.

By reason of all these facts the Bureau of Reclamation will keep open until August 1 the offer heretofore made, and will remain ready to negotiate with you with the objective of executing a formal contract. Your early attention to this letter will be appreciated.

Sincerely yours,

/s/ RICHARD L. BOKE,
RICHARD L. BOKE,
Regional Director.

[Endorsed]: Filed September 25, 1947.

United States District Court, Southern District of California, Northern Division

No. 685-ND Civil

EVERETT G. RANK, et al., Plaintiffs,

vs.

JULIUS A. KRUG, as Secretary of the Interior, et al., Defendants.

AMENDMENT TO COMPLAINT

Come now the plaintiffs and amend their complaint on file herein by adding the following paragraph, to be known as Paragraph XIV, to plaintiffs' complaint on file herein:

XIV.

That plaintiffs are representing by virtue of this action, heretofore filed as a class action, approximately 125 other ranchers whose lands total approximately 47,500 acres and lie along and are riparian to the said San Joaquin River between Friant Dam and Mendota Dam, hereinbefore mentioned, none of whom have filed suits under the Tucker Act and whose said lands will be irreparably damaged in the same manner as plaintiffs' lands, as hereinabove set forth; that plaintiffs by virtue of this said action heretofore filed in the above entitled court also represent approximately 1000 other ranchers in the watershed of said San Joaquin River lying between Friant Dam and

Mendota Dam heretofore in this said action mentioned, whose lands comprise approximately 600,000 acres and over-lie and are supplied by underground and percolating waters of said San Joaquin River and whose supply of water from said underground and percolating waters supplied by said San Joaquin River will [254]* be similarly damaged in approximately the same way plaintiff's lands will be damaged by the action and threatened action of said defendants and none of whom, according to the best information and belief of plaintiffs, have filed any action for damages as a result of said defendants' actions under the Tucker Act.

Dated: September 15, 1949.

/s/ CLAUDE L. ROWE,
Attorney for Plaintiffs. [255]

Duly Verified.

Affidavit of Service by Mail Attached. [256]

[Endorsed]: Filed September 16, 1949.

[Title of District Court and Cause.]

AMENDMENT TO COMPLAINT

Come now the plaintiffs and amend their complaint on file herein by adding the following paragraph, to be known as Paragraph XIV, to plaintiffs' complaint on file herein:

---

* Page numbering at foot of page of original certified Transcript of Record.

XIV.

That plaintiffs are representing by virtue of this action, heretofore filed as a class action, approximately 125 other ranchers whose lands total approximately 47,500 acres and lie along and are riparian to the said San Joaquin River between Friant Dam and Mendota Dam, hereinbefore mentioned, none of whom have filed suits under the Tucker Act and whose said lands will be irreparably damaged in the same manner as plaintiffs' lands, as hereinabove set forth and none of whom plaintiffs are informed and believe and have consented to the taking by the defendants of said waters of said San Joaquin River; that plaintiffs by virtue of this said action heretofore filed in the above entitled court also represent approximately 1000 other ranchers in the watershed of said San Joaquin River [264] lying between Friant Dam and Mendota Dam heretofore in this said action mentioned, whose lands comprise approximately 600,000 acres and over-lie and are supplied by underground and percolating waters of said San Joaquin River and whose supply of water from said underground and percolating waters supplied by said San Joaquin River will be similarly damaged in approximately the same way plaintiffs' lands will be damaged by the action and threatened action of said defendants and none of whom, according to the best information and belief of plaintiffs, have filed any action for damages as a result of said defendants' actions under the Tucker Act and plaintiffs are informed and believe that none of said 1000 other ranchers have consented to the

taking of said waters of said San Joaquin River by said defendants.

Dated: September 29, 1949.

/s/ CLAUDE L. ROWE,
Attorney for Plaintiffs. [265]

Duly Verified.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed September 30, 1949.

[Title of District Court and Cause.]

MINUTE ORDER

Los Angeles
Wednesday, March 8, 1950
10 A.M.

Present: Hon. Walter L. Pope, Circuit Judge; Ben Harrison, District Judge; Pierson M. Hall, District Judge.

S. W. Stacey, Deputy Clerk; A Wahlberg and J. D. Ambrose Reporters, alternating.

David Brand, Crier.

Everett G. Rank, et al., v. Julius A. Krug, etc., No. 685-ND Civil.

Josephine Jasper vs. Julius A. Krug, etc., No. 668-ND Civil.

Hollister Land & Cattle Co. vs. Julius A. Krug, etc., No. 680-ND Civil.

O. G. Cervelli, et al. vs. Julius A. Krug, etc., No. 681-ND Civil.

Northern Calif. Fisheries Assoc. vs. Julius A. Krug, etc., No. 832-NW Civil.

These five causes now coming before the Court for hearing on (1) motion to dismiss, pursuant to notice filed Feb. 2, 1950, and,

* * * * *

Re Item 1: Court hears motion to dismiss all cases, considering only the matter of a constitutional question, and orders that no substantial constitutional question is involved concerning the Acts of Congress.

* * * * *

[Title of District Court and Cause.]

MOTION TO DISMISS COMPLAINT

Comes now the Defendant, Southern San Joaquin Municipal District, a Political Subdivision, and moves to dismiss the above entitled action as to said defendant and its Board of Directors upon the Ground that the Complaint on file herein fails to state a claim upon which relief can be granted against the Southern San Joaquin Municipal District in the following part, to-wit:

(a) The suit is essentially one against the United States which enjoins a constitutional exercise of power by the officers thereof and there is no provision in law wherein the United States has consented to be sued in that particular type of action.

(b) The question of compensation involved in this action should be brought in the Court of Claims under the Tucker Act.

(c) There is no authority under the existing law for an action to be brought against the United States for declaratory relief. [544]

(d) In so far as the Southern San Joaquin Municipal District is concerned the action is one to invalidate certain contracts between the United States of America and the said District. The United States is an indispensable party to said contracts and the relations between the District and the United States are directly in issue. There can be no adjudication with respect to the Southern San Joaquin Municipal District without the persons of the other indispensable party, namely: The United States of America. The United States is not properly a party because there has been no consent therein in that respect by Congress to suit against the Sovereign in that capacity.

(e) In so far as the suit involves the right of releases of water in order to protect fish and wild life the action is against the United States. The Complaint does not show any consent given to be sued and no right to sue the United States is shown or pleaded.

Said Motion will be based upon the records and files in this proceeding.

Dated: March 23, 1950.

/s/ EDWIN P. JACOBSEN,
Attorney for Defendant Southern San Joaquin Municipal District. [545]

Points and Authorities Attached.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed March 30, 1950.

[Title of District Court and Cause.]

NOTICE OF MOTION TO AMEND COMPLAINT IN INTERVENTION

To: Michael W. Straus, as Commissioner of the Bureau of Reclamation of the United States of America, Richard Boke, as Regional Director of the Bureau of Reclamation of the United States of America, Martin Blote, as Regional Watermaster of the Bureau of Reclamation of the United States of America, Jack Rodner, as District Manager of the Bureau of Reclamation of the United States of America, R. K. Durant, as Construction Engineer and Resident Engineer at Friant Dam for the Bureau of Reclamation of the United States of America, Julius A. Krug, Michael W. Straus, Richard Boke, Martin Blote, Jack Rodner and R. K. Durant, and Ernest A. Tolin, Irl D. Brett, Francis B. Critchlow and Ralph S. Boyd, their attorneys; Madera Irrigation District [904] and Joseph A. Secara, Arnold Sallaberry, Chester Ridgeway, Earl Yocum and Carl Gaumnitz, as Directors of the Madera Irrigation District, and Stephen W. Downey, and Harris, Wiley & Harris, its and their attorneys; Southern San Joaquin Municipal Utility District, a Public Corporation, and Milo Marshall, Albert Davis, Frank Panero, D. L. Shifflep and E. J. Girard, as Directors of Southern San Joaquin Municipal Utility District, and Edwin Jacobsen, its and their attorney; Sam Ham-

bert and Panoche Water Distribution Association, and Linneman, Burgess & Telles, their attorneys; The Irrigation Districts Association of California, and Ronald B. Harris, its attorney (as amicus curiae) Farmer's Water District, Chowchilla Water District, W. J. Fortier, Z. R. Fulty, Eugene Ham and Raymond L. Yearout and Green, Chandler & Green and Denslow Green, their attorneys; Stone Corral Irrigation District, Terra Bella Irrigation District, Delano-Earlimart Irrigation District, and John R. Locke, Jr., their attorney; Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District and Delano-Earlimart Irrigation District and James K. Abercrombie, their attorney; Lindsay-Strathmore Irrigation District, Lindmore Irrigation District, Ivanhoe Irrigation District, and James R. McBride and McBride & Feamster, their attorneys; Saucelito Irrigation District, Orange Cove Irrigation District, and LeRoy McCormick, their attorney; Tulare Irrigation District and Lower Tule River Irrigation District and Calvin L. Russell and Russell Henry, their attorneys; and all other Defendants and attorneys in the above entitled action; Everett J. Rank, Duane M. Folsom, Bertha Folsom, E. Florence Folsom, Evelyn Lydia Rank, J. E. Cobb, Ruby Cobb, Lawrence D. Cobb, Marjorie E. Sims, L. L. Howard, Alma Howard, and Amelia Ann Holland, plaintiffs, and Claude L. Rowe, their attorney: [905]

You and each of you will please take notice that The People of the State of California will move the above Court for leave to amend the complaint in intervention heretofore filed.

Said motion will be made before Honorable Peirson M. Hall, District Judge, at the Court Room of the Post Office Building, Fresno, California, on August 21, 1951, at 10:00 o'clock A.M., or as soon thereafter as counsel may be heard.

Dated: August 10, 1951.

/s/ EDMUND G. BROWN,
Attorney General,
/s/ ARVIN B. SHAW, JR.,
Assistant Attorney General,
/s/ B. ABBOTT GOLDBERG,
Deputy Attorney General,
Attorneys for The People of The State of California. [906]

[Endorsed]: Filed August 11, 1951.

[Title of District Court and Cause.]

MOTION TO AMEND COMPLAINT IN INTERVENTION

The People of the State of California, intervener herein, hereby move for leave to amend the complaint in intervention heretofore filed on the ground that said complaint does not accurately reflect the position of the intervener, and to conform said

complaint to the evidence adduced at the hearings heretofore held in this proceeding.

Said motion will be based on all the papers heretofore filed, on all the evidence heretofore presented, and on the copy of the proposed amended complaint which is attached hereto.

Dated: August 10, 1951.

/s/ EDMUND G. BROWN,
Attorney General,
/s/ ARVIN B. SHAW,
Assistant Attorney General,
/s/ B. ABBOTT GOLDBERG,
Deputy Attorney General,
Attorneys for The People of The State of California. [907]

[Endorsed]: Filed August 11, 1951.

[Title of District Court and Cause.]

AMENDED COMPLAINT IN INTERVENTION
(By The People of the State of California)

The People of the State of California, appearing through Edmund G. Brown, Attorney General, having intervened in the above entitled action, with leave of court amend the complaint in intervention and for cause of action allege as follows:

I.

That the State of California is one of the United States of America, and is hereinafter referred to

as the State; that the State appears in its sovereign, governmental, and proprietary capacities, in its own interest and for the protection of its own rights; also as parens patriae, in the interest of and for the protection of all its citizens, residents, landowners and water users, and its agencies, the defendant districts, and to protect the integrity and proper application of its Constitution and laws respecting water and the use thereof, [908] water rights, contracts, property and property rights; also as trustor of an express trust, hereinafter described which trust relates to the use of water in the Central Valley Project hereinafter mentioned; also as absolute owner of the corpus of the water to be used in and by said Central Valley Project and as owner of the right of reversion of any rights to the use of such water which may be forfeited or otherwise terminated for non-use or otherwise; and as trustee for the use and benefit of the beneficiaries of the Central Valley Project of the right to apply to beneficial use for irrigation in said Central Valley Project certain waters of the Sacramento and San Joaquin Rivers and streams tributary thereto, which waters will be commingled and used for the purposes of said project.

II.

Allege that Central Valley Project is a multiple-purpose project designed and planned for the general purpose of irrigation of arid lands in the Great Central Valley of California, improvement of navigation, river regulation, flood control, incidental

development of hydroelectric power, repulsion of salt water within the delta of the Sacramento and San Joaquin Rivers, and other purposes; that the Great Central Valley of California is the valley which lies in the basin of the Sacramento and San Joaquin Rivers and their tributaries; that said project contemplates the use in said valley for irrigation, municipal, domestic, power and other beneficial and public purposes, of the water of the Sacramento and San Joaquin Rivers and their tributaries, that said waters arise, flow and discharge into the Pacific Ocean wholly within the State of California; that said project was planned and generally designed by the [909] State of California; that the plans, purposes and features of said project are substantially as set out and described in Bulletins Nos. 25, 26 and 29 of the Division of Water Resources, Department of Public Works, of the State of California, which bulletins constitute reports submitted by said division to the California Legislature of 1931 pursuant to acts of said Legislature requiring the preparation and submission of said reports; that said bulletins are hereby referred to and incorporated by reference in this answer. That the coordinated plan for the conservation, development and utilization of the water resources of the State as set forth in said bulletins, among others, has been approved and adopted by the Legislature of the State as the State Water Plan.

III.

Allege that by act of its legislature adopted August 5, 1933 and effective January 13, 1934 (California Statutes 1933, p. 1042) the State of California authorized the construction of the Central Valley Project and created a state agency designated "Water Project Authority of the State of California," and authorized said Authority to construct, maintain and operate said project and to use therefor the proceeds of sale of certain state bonds authorized by said Act; that following the adoption of said Act it became and was impracticable for the State to sell said bonds and construct the project; that by the Acts of Congress designated the Emergency Relief Appropriation Act of 1935 and the Rivers and Harbors Act of 1935, by executive orders signed by the President September 10, 1935, and November 16, 1935, a finding of feasibility signed by the Secretary of the Interior and approved by the President December 2, 1935, and the Acts of Congress designated [910] the Rivers and Harbors Act of 1937, and the Rivers and Harbors Act of 1940, and the Act of Congress approved October 14, 1949, Public Law No. 356, 81st Congress, first session, and the Act of Congress approved September 26, 1950, Public Law 839, 81st Congress, second session, the Secretary of the Interior was authorized to construct said Central Valley Project and has undertaken and entered upon the construction of said project; that the major engineering features of said project have been constructed; and that in this work the United

States is proceeding in substantial accord with the State Water Plan.

IV.

Allege that the major engineering features of said project include:

(1) Shasta Dam and reservoir and hydroelectric power plant on the Sacramento River in Shasta County, California, with certain electric transmission lines leading from said power plant, and appurtenances thereof;

(2) Contra Costa Conduit, a canal leading from the Sacramento-San Joaquin delta to the vicinity of Martinez;

(3) Delta Cross-Channel, to conduct water of and from the Sacramento River and its tributaries across the said delta to the lower San Joaquin River, together with the Tracy Pumping Plant and the Delta-Mendota Canal, to convey water from said Delta Cross-Channel to the Mendota Pool in the San Joaquin River;

(4) Friant Dam and reservoir on the Upper San Joaquin River near Friant, Fresno County;

(5) Madera Canal, to conduct water stored in Friant reservoir northerly to a point on Chowchilla River;

(6) Friant-Kern Canal, to conduct water stored in [911] Friant reservoir southerly to a point on Kern River near Bakersfield.

V.

Allege that the contract dated July 27, 1939, between the United States and the San Joaquin and

Kings River Canal and Irrigation Company, Incorporated, and other corporations, commonly referred to as the "Exchange Contract," and by the contract dated July 27, 1939, between the United States and Miller & Lux Incorporated and Gravelly Ford Canal Company, corporations doing business in California, and by other comparable contracts, the United States acquired certain appropriative and prescriptive rights, contract rights and estoppels against the exercise by said companies and others of riparian and prescriptive rights, claimed by them to use for irrigation and other purposes, waters of the San Joaquin River and its tributaries, and the United States in said "Exchange Contract" agreed to deliver to the contracting companies, in lieu and in exchange for their rights to the flow of the San Joaquin River, certain waters of the Sacramento River and its tributaries, to be imported to Mendota Pool through and by means of the Delta Cross-Channel, Tracy Pumping Plant and the Delta-Mendota Canal; that the United States entered into all of said contracts herein referred to in order that it might be able to store in Friant Reservoir, free of the claims of any other parties, waters of the San Joaquin River arising above said reservoir and divert the same northerly through the Madera Canal and southerly through the Friant-Kern Canal, for irrigation of lands in the counties extending from Madera to Kern, in general along the easterly side of the San Joaquin Valley floor; that it is intended and proposed that the United States shall divert [912] and deliver waters impounded in Friant Res-

ervoir sometimes known as Millerton Lake and convey the same through Friant-Kern Canal for irrigation of the lands in defendant districts; that the State Water Plan requires that there be but a minimal flow, if any, between Friant Dam and Mendota Pool to achieve the diversion and delivery described above.

VI.

Allege that the State of California, acting through its Department of Finance and Director of Finance, pursuant to certain statutes adopted by the Legislature of California, heretofore filed certain applications with the Division of Water Resources of the Department of Public Works of California for the appropriation of unappropriated waters of the Sacramento and San Joaquin Rivers and their tributaries, for the use and benefit of the Central Valley Project and the owners of lands to be irrigated therefrom; that by assignments, made pursuant to said Statutes, the State of California, acting through its Department of Finance and Director of Finance, assigned to the United States for the use and benefit of said Central Valley Project certain of said applications, to-wit: by assignment dated September 3, 1938, assigned Application No. 5625 to appropriate water of the Sacramento River at Shasta Dam for power purposes, and Application No. 5626 to appropriate water of the Sacramento River at Shasta Dam for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9364 to appropriate water of the

Sacramento River at points of diversion located along the Sacramento River from Shasta Dam to the Sacramento-San Joaquin Delta and on the channels of said delta, for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. [913] 9365 to appropriate water of the Sacramento River at Shasta Dam for power purposes; and by assignment dated September 30, 1939, assigned Application No. 5637 to appropriate water of the San Joaquin River at Friant Dam for power purposes, and Application No. 5638 to appropriate water of the San Joaquin River at Friant Dam for irrigation, domestic and flood control purposes, and Application No. 9369 to appropriate water of the San Joaquin River at Temperance Flat Dam in Sections 24 and 25, T.10, S.R.21 E. M.D.B. & M. and at Friant Dam for irrigation, domestic and flood control purposes; that a true copy of said assignment dated September 3, 1938, is hereto attached, marked Exhibit "A" and a true copy of said assignment dated September 30, 1939, is hereto attached, marked Exhibit "B" and said copies are by reference made a part hereof.

VII.

Allege that by virtue of the terms of said assignments the State of California has become and is the trustor or grantor of an express trust; the United States has become and is the trustee of that trust; the landowners to acquire rights to the use of water from the works of the Central Valley

Project, including the landowners of defendant districts, have become and are the beneficiaries of that trust; that any and all claims or interests of the United States obtained by the "Exchange Contract" and similar or comparable contracts, and under the assignments, Exhibits "A" and "B" hereto, are held by the United States as such trustee under said express trust and as a part of a trust fund or res for the use and benefit of the Central Valley Project and the landowners to acquire rights to the use of water from the works of said project, and in particular the [914] landowners of defendant districts; that the State of California, as trustor or grantor and as parens patriae, is entitled to be heard, among other things, as to all matters relating to the administration and execution of said trust by said trustee and entitled to require that the trustee administer said trust according to its true intent and meaning.

VIII.

Allege that said Central Valley Project will provide a stabilized source of supplemental water supply for irrigation and other purposes for many hundreds of thousands of acres of land now under cultivation and irrigation in the Great Central Valley of California; that the construction, operation and maintenance of said Central Valley Project will profoundly affect the economy and welfare of the people of at least 21 of the 58 counties of California, embracing more than half of the cultivated agricultural lands of the State.

IX.

That pursuant to Article XIV, section 3 of the Constitution of the State, the plaintiffs cannot demand and the defendants cannot permit any wasteful or prodigal use of the water of the San Joaquin River. That the plaintiffs have no right to the whole flow of the San Joaquin River as alleged in paragraph IV of the complaint, nor do the plaintiffs have the right to any part of the flow of the river in excess of the amounts required to meet their reasonable needs for irrigation and domestic uses. That the plaintiffs have no right to insist on the uninterrupted use of their existing diversion devices and must submit to a physical solution whereby their reasonable needs and uses may be supplied; that this court has the power and duty of requiring a physical solution. That if the plaintiffs' rights have been subjected to [915] substantial impairment, they may be entitled to compensation, but they are not entitled to an injunction as prayed in the complaint because the impairment, if any, has been, for the purpose of effectuating a public use as described in the State Water Plan.

Wherefore, the intervener prays:

(1) That the rights of the plaintiffs and defendants be determined according to the laws of the State of California;

(2) That the injunction as prayed for in the complaint be denied and that a physical solution, if possible, be directed;

(3) That the impairment, if any, of the plain-

tiffs' rights be declared to be for a public use, and the plaintiffs relegated to their remedy by damages.

/s/ EDMUND G. BROWN,
Attorney General of the State of California,
/s/ ARVIN B. SHAW,
Assistant Attorney General,
/s/ B. ABBOTT GOLDBERG,
Deputy Attorney General,
Attorneys for The People of the State of California. [916]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
City and County of San Francisco—ss.

The undersigned, being duly sworn, says: I am a citizen of the United States, over the age of eighteen (18) years, a resident of the City and County of San Francisco, State of California, and not a party to the above entitled action;

That Messrs. Ernest A. Tolin, Irl D. Brett, and Francis B. Critchlow, United States Attorneys, and Ralph S. Boyd, Esq., the attorneys of record for Plaintiffs Julius A. Krug, Michael W. Straus, Richard Boke, Martin Blote, Jack Rodner and R. K. Durant, maintain offices in the Federal Building, Los Angeles 12, California and in the Department of Justice Building, Washington, 25, D. C., respectively;

That Stephen W. Downey, Esq., and Messrs. Harris, Willey & Harris, Ronald B. Harris, the attorneys of record for Plaintiffs Madera Irrigation District and Joseph A. Secara, Arnold Sallaberry, Chester Ridgeway, Earl Yocum and Carl Gaumnitz, as Directors, respectively, maintain offices in the Capital National [917] Bank Building, Sacramento, California and at 602 T. W. Patterson Building, Fresno, California, respectively;

That Edwin Jacobsen, Esq., the attorney of record for Plaintiffs Southern San Joaquin Municipal Utility District, a public corporation, and Milo Marshall, Albert Davis, Frank Panero, D. L. Shifflep and E. J. Girard, as Directors, maintains offices in the City of Delano, California;

That Messrs. Linneman, Burgess & Telles, the attorneys of record for Plaintiffs Sam Hamberg and Panoche Water Distribution Association, maintain offices in the Angle Building, Dos Palos, California;

That Donald B. Harris, Esq., the attorney of record for The Irrigation Districts of California (Amicus Curiae) maintains offices at 602 T. W. Patterson Building, Fresno California;

That Messrs. Sherwood Green, Walter Chandler and Denslow Green, the attorneys of record for Plaintiffs Farmer's Water District, Chowchilla Water District, W. J. Fortier, Z. R. Fulty, Eugene Ham and Raymond L. Yearout, Directors, maintain offices at 219 South "D" Street, Madera, California;

That John R. Locke, Jr., the attorney of record for Plaintiffs Stone Corral Irrigation District,

Terra Bella Irrigation District and Delano-Earlimart Irrigation District, maintains offices at 127 North Church Street, Visalia, California;

That James K. Abercrombie, Esq., the attorney of record for Plaintiffs Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District and Delano-Earlimart Irrigation District, maintains offices at 410 Bank of America Building, Visalia, California;

That James Renwick McBride, Esq., the attorney of record for Plaintiffs Lindsay-Strathmore Irrigation District, Lindmore Irrigation District, and Ivanhoe Irrigation District, maintains offices in the Security First National Bank Building, Lindsay, California;

That LeRoy McCormick, Esq., the attorney of record for Plaintiffs Saucelito Irrigation District and Orange Cove Irrigation District, maintains offices at 420 Bank of America Building, Visalia, California;

That Messrs. Calvin L. Russell and Russell Henry, the attorneys of record for Plaintiffs Tulare Irrigation District and Lower Tule River Irrigation Distict, maintain offices at 224 East Tulare Street, Tulare, California;

That Vincent M. McGovern, Esq., Attorney at Law, maintains offices in the Russ Building, 235 Montgomery Street, San Francisco, California;

That Claude L. Rowe, Esq., the attorney of record for Plaintiffs Everett J. Rank, Duane E. Folsom, Berth Folsom, E. Florence Folsom, Evelyn

Lydia Rank, J. E. Cobb, Ruby Cobb, [918] Lawrence D. Cobb, Marjorie E. Sims, L. L. Howard, Alma Howard and Amelia Ann Holland, maintains offices at 910 Security Bank Building, Fresno, California;

and between said respective places there is a regular communication by mail; on the 10th day of August, 1951, I served true copies of the Notice of Motion, Motion, and Amended Complaint herein, to the original of which this affidavit is attached, on said last-named attorneys of record, by depositing said copies, on said date, in the Post Office at the said City and County of San Francisco, enclosed in sealed envelopes, addressed to said attorneys at their respective offices, and prepaying the postage thereon.

/s/ MARGARET H. CRAVALKO.

Subscribed and sworn to before me, this 10th day of August, 1951.

/s/ B. ABBOTT GOLDBERG,
Deputy Attorney General. [919]

EXHIBIT "A"

ASSIGNMENT

Whereas, under and by virtue of the provisions of an Act of the Legislature of the State of California, entitled "An Act authorizing the Department of Finance to appropriate waters in connec-

Exhibit "A"—(Continued)

tion with the utilization and conservation of the water resources of the state in the development of a general or coordinated plan; authorizing the State Department of Finance to release or assign such appropriations; authorizing the State Department of Finance to request other departments of the state or state officers to furnish services or assistance to make investigations in connection with the development of a general or coordinated plan for the utilization or conservation of the water resources of the State", approved April 29, 1927, being Chapter 286, Statutes of 1927, page 508, the State Department of Finance is directed and authorized pursuant to the provisions of the Water Commission Act and the rules and regulations of the Division of Water Resources of the Department of Public Works, to make and file an application or applications for any water or the use thereof which in the judgment of the State Department of Finance is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State of California; and

Whereas, pursuant to the provisions of the aforesaid act, the State Department of Finance did, on the 30th day of July, nineteen hundred twenty-seven, file with the Division of Water Rights of the Department of Public Works of the State of California, those certain applications for permits to appropriate unappropriated waters of the Sacra-

Exhibit "A"—(Continued)

mento River, designated therein as Application Nos. 5625 and 5626; and [920]

Whereas, pursuant to the provisions of the aforesaid act, as amended, the State Department of Finance did, on the 2nd day of August, nineteen hundred thirty-eight, file with the Division of Water Resources of the Department of Public Works of the State of California, those certain applications for permits to appropriate unappropriated waters of the Sacramento River, designated therein as Applications Nos. 9364 and 9365; and

Whereas, the aforesaid Act of April 29, 1927, as amended by the act approved June 12, 1931, being Chapter 720, Statutes of 1931, page 1513; the act approved May 24, 1933, being Chapter 537, Statutes of 1933, page 1425; and the act approved July 15, 1935, being Chapter 462, Statutes of 1935, page 1518, provides, among other things, (a) that notwithstanding anything in said act contained, the State Department of Finance shall have power, in its discretion, to release from priority or to assign any portion of any of the appropriations that may be filed under the provisions thereof when such release or assignment is for the purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State, and (b) that no such priority shall be released, or assignment made of any such appropriation that will, in the judgment of the State Department of Finance, deprive the county in which such appro-

Exhibit "A"—(Continued)

priated water originates, of any such water necessary for the development of such county; and

Whereas, The United States of America is now engaged in the construction of that certain project known as and designated the Central Valley Project, California, a part of a general or coordinated plan for the development, utilization and conservation of the water resources of the State of California and which project was authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115), and the First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1622), and reauthorized by Act of Congress approved August 26, 1937 (50 Stat. 844), and has requested the State Department of Finance to assign to the United States for the use and benefit of said project all right, title and interest in and to the said Applications Nos. 5625, 5626, 9364 and 9365, and such appropriations of the waters of said river as were made thereby, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder:

Now, Therefore, in pursuance of the discretion and judgment vested in it by the aforesaid Act of April 29, 1927, as amended, the State Department of Finance, being fully advised in the premises, does hereby find and determine (a) that the assignment to the United States, in the form and substance hereinafter made, of the aforesaid applications Nos. 5625, 5626, 9364 and 9365, and such appropriations of the water of said river as were made

Exhibit "A"—(Continued)

thereby, and all right, title and interest therein and thereto, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder for the use and benefit of said Central Valley Project, California, is for a purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State of California, but is in furtherance thereof, and (b) that said assignment, in the form and substance hereinafter made, of the aforesaid applications will not, in the judgment of the State Department of Finance, deprive any county in which such appropriated water originates, of any such water necessary for the development of such county; and

The State Department of Finance, in consideration of the foregoing and of the general benefits to accrue to the State of California from the construction by The United States of America of the Central Valley Project, California, established and authorized as aforesaid, does hereby transfer, assign and set over to The United States of America, and its assigns, for the use and benefit of said Central Valley Project, California, all its right, title and interest in and to the aforesaid applications Nos. 5625, 5626, 9364 and 9365, and such appropriations of the water of said river as were made thereby, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder, subject to depletion of the stream flow above

Exhibit "A"—(Continued)

Shasta (formerly Kennett) Dam by the exercise of lawful rights to the use of water for the purpose of development of the counties in which such water originates, whether such rights have been heretofore or may be hereafter initiated or acquired, such depletion not to exceed in the aggregate four million five hundred thousand (4,500,000) acre-feet of water in any consecutive ten-year period, and not to exceed a maximum depletion in any one year in excess of seven hundred thousand (700,000) acre-feet.

In Witness Whereof, the Department of Finance of the State of California, acting by and through the Director of Finance, has caused this assignment to be executed this 3rd day of September, A. D. nineteen hundred thirty-eight.

[Seal] DEPARTMENT OF FINANCE OF THE STATE OF CALIFORNIA,
/s/ By ARLIN E. STOCKBURGER,
Director of Finance.

State of California,
County of Sacramento—ss.

On this 3rd day of September, A.D. nineteen hundred thirty-eight, before me, R. N. Philpot, a Notary Public in and for the said County and State, personally appeared Arlin E. Stockburger, Director of Finance of the State of California, known to me to be the Director of Finance of the State of California, the Department of the State of California that executed the within instrument, known to me

Exhibit "A" (Continued)

to be the person who executed the within instrument, on behalf of the Department of Finance of the State of California, and acknowledged to me that such Department executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] R. N. PHILPOT,
Notary Public in and for said County and State.
My commission expires November 25, 1940.

EXHIBIT "B"

ASSIGNMENT

Whereas, under and by virtue of the provisions of an Act of the Legislature of the State of California, entitled "An act authorizing the Department of Finance to appropriate waters in connection with the utilization and conservation of the water resources of the state in the development of a general or coordinated plan; authorizing the State Department of Finance to release or assign such appropriations; authorizing the State Department of Finance to request other departments of the state or state officers to furnish services or assistance to make investigations in connection with the development of a general or coordinated plan for the utilization or conservation of the water resources of the State", approved April 29, 1927, being Chapter 286, Statutes of 1927, page 508, the State

Exhibit "B"—(Continued)

Department of Finance is directed and authorized, pursuant to the provisions of the Water Commission Act and the rules and regulations of the Division of Water Resources of the Department of Public Works, to make and file an application or applications for any water or the use thereof which in the judgment of the State Department of Finance is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State of California; and

Whereas, pursuant to the provisions of the aforesaid act, the State Department of Finance did, on the 30th day of July, nineteen hundred twenty-seven, filed with the Division of Water Rights of the Department of Public Works of the State of California, those certain applications for permits to appropriate unappropriated waters of the San Joaquin River, designated therein as Applications Nos. 5637 and 5638; and

Whereas, pursuant to the provisions of the aforesaid act, as amended, the State Department of Finance did, on the 2nd day of August, nineteen hundred thirty-eight, file with the Division of Water Resources [921] or the Department of Public Works of the State of California, that certain application for permit to appropriate unappropriated waters of the San Joaquin River, designated therein as Application No. 9369; and

Whereas, the aforesaid Act of April, 29, 1927,

Exhibit "B"—(Continued)

as amended by the act approved June 12, 1931, being Chapter 720, Statutes of 1931, page 1513; the act approved May 24, 1933, being Chapter 537, Statutes of 1933, page 1425; and the act approved July 15, 1935, being Chapter 462, Statutes of 1935, page 1518, provides, among other things, (a) that notwithstanding anything in said act contained, the State Department of Finance shall have power, in its discretion, to release from priority or to assign any portion of any of the appropriations that may be filed under the provisions thereof when such release or assignment is for the purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State, and (b) that no such priority shall be released, or assignment made of any such appropriation that will, in the judgment of the State Department of Finance, deprive the county in which such appropriated water originates, of any such water necessary for the development of such county; and

Whereas, The United States of America is now engaged in the construction of that certain project known as and designated the Central Valley Project, California, a part of a general or coordinated plan for the development, utilization and conservation of the water resources of the State of California and which project was authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115), and the First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1622), and reauthorized by Act of

Exhibit "B"—(Continued)

Congress approved August 26, 1937 (50 Stat. 844), and has requested the State Department of Finance to assign to the United States for the use and benefit of said project all right, title and interest in and for the said Applications Nos. 5637, 5638 and 9369, and such appropriations of the waters of said river as were made thereby and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder;

Now, Therefore, in pursuance of the discretion and judgment vested in it by the aforesaid act of April 29, 1927, as amended, the State Department of Finance, being fully advised in the premises, does hereby find and determine (a) that the assignment to the United States, in the form and substance hereinafter made, of the aforesaid Applications Nos. 5637, 5638 and 9369, and such appropriations of the water of said river as were made thereby, and all right, title and interest therein and thereto, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder for the use and benefit of said Central Valley Project, California, is for a purpose of development not in conflict with any general or coordinated plan looking towards the development, utilization or conservation of the water resources of the State of California, but is in furtherance thereof, and (b) that said assignment, in the form and substance hereinafter made, of the aforesaid applications will not, in the judgment of the State Department of Finance, deprive any county in which such appropriated water originates, of any

Exhibit "B"—(Continued).

such water necessary for the development of such county; and

The State Department of Finance, in consideration of the foregoing and of the general benefits to accrue to the State of California from the construction by The United States of America of the Central Valley Project, California, established and authorized as aforesaid, does hereby transfer, assign and set over to the United States of America, to be exercised by and through its Bureau of Reclamation, for the use and benefit of said Central Valley Project, California, all its right, title and interest in and to the aforesaid Applications Nos. 5637, 5638 and 9369, and such appropriations of the water of said river as were made thereby, and all right, title and interest in and to the water and the use of water covered thereby or initiated thereunder.

In Witness Whereof, the Department of Finance of the State of California, acting by and through the Director of Finance, has caused this assignment to be executed this 30th day of September, A.D., nineteen hundred thirty-nine.

DEPARTMENT OF FINANCE OF
THE STATE OF CALIFORNIA,
PHIL S. GIBSON,
Director of Finance,
By GEORGE KILLION,
Deputy.

Duly Verified.

[Endorsed]: Filed August 11, 1951.

[Title of District Court and Cause.]

ANSWER

(Chowchilla Water District to Complaint)

Come now defendants, Chowchilla Water District, sued herein as John Doe District Twenty-seven, and Frank Justin, Duval Williams, H. P. Dower, Mark Van Elswyk, and Charles Blaylock, sued herein as John Doe Directors Sixty-five to Seventy, and, in answer to plaintiffs' complaint on file and plaintiffs' amended complaint on file, allege, deny and admit as follows:

First Defense

I.

The complaint fails to state a claim against defendants upon which relief can be granted.

Second Defense

I.

In answer to paragraph II of plaintiffs' complaint on file herein, these answering defendants deny that the underground and percolating waters, water strata and subterranean streams which are supplied by the San Joaquin River between Friant and Mendota [949] Dams, on said River, extend approximately fifteen (15) miles southerly from and parellel to the south bank of said San Joaquin River and five (5) miles northerly from and parallel to a north bank of said San Joaquin River between Friant Dam and Mendota Dam on said

San Joaquin River, but admit the remaining allegations therein set forth.

II.

In answer to paragraph III of plaintiffs' complaint on file herein, these answering defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and basing their denial upon this ground, deny, generally and specifically, each and every allegation therein contained.

III.

In answer to paragraph IV of plaintiffs' complaint on file herein, these answering defendants deny, generally and specifically, each and every allegation therein contained, except that these answering defendants admit that certain of the lands described in plaintiffs' complaint have made and are making a beneficial use of small quantities of water from the San Joaquin River, both in surface application and in the supply of underground strata and percolating water; that the exact nature and extent of the quantity of water so used by the said plaintiffs, and the exact description of the lands described in plaintiffs' complaint on file herein which are riparian to the said San Joaquin River, or whose underground water supply is dependent upon the flow of the San Joaquin River, is at this time unknown to these answering defendants; that these answering defendants request leave of court to amend this answer and all subsequent proceedings

at such time as they may ascertain which of the lands described in plaintiffs' complaint on file herein are riparian to the said San Joaquin River and which of the lands described in plaintiffs' complaint [950] on file herein are dependent upon the said San Joaquin River as the source of their underground percolating water supply, but specifically deny that the said lands, when ascertained and described herein, will require all of the flow of the San Joaquin River to furnish sufficient water for beneficial use for surface irrigation and domestic use upon the said lands and to supply the underground percolating water strata underlying said lands. That these answering defendants admit that the laws and statutes of the State of California, at all times mentioned in said complaint, were, as set forth on page 8 of said complaint. That these answering defendants further admit that certain commercial sand, gravel and rock extraction plants and properties are located on the said San Joaquin River, but specifically deny that all of the waters of the said San Joaquin River are needed and necessary, or needed or necessary, in order to operate said commercial sand, rock and gravel extraction plants, and/or to annually renew said rock, sand and gravel deposits.

IV.

In answer to paragraph V of plaintiffs' complaint on file herein, these answering defendants deny, generally and specifically, each and every allegation therein set forth, except that these answering defendants admit that a dam has been constructed

across said San Joaquin River near Friant, California, which said dam is known as Friant Dam of the Central Valleys Project of the United States Bureau of Reclamation, and consists of certain concrete abutments, levees, drum gates and diversion works, together with concrete canals and other diversion works, and further admit that defendants intend to and will impound and store certain water of the San Joaquin River.

V.

In answer to paragraph VI of plaintiffs' complaint on file herein, these answering defendants deny, generally and [951] specifically, each and every allegation therein contained, except that these answering defendants admit that the United States Bureau of Reclamation, acting through its officers as therein set forth, delivered from Friant Dam to the Madera Irrigation District certain quantities of water from the San Joaquin River and further admit that certain quantities of water have been stored, by the said United States Bureau of Reclamation for delivery to Madera Irrigation District, behind said Friant Dam, further admitting that, except for such storage and diversions, the flow of the San Joaquin River would normally and in the course of nature flow by, through and under certain of the lands described in plaintiffs' complaint, further admitting that said impounding of the said water and said delivery to the Madera Irrigation District has continued and is continuing from and after the date of filing of this complaint.

VI.

In answer to paragraph VII of the plaintiffs' complaint on file herein, these answering defendants deny, generally and specifically, each and every allegation therein contained except that these answering defendants admit that the United States Bureau of Reclamation, acting through its officers as therein set forth, delivered from Friant Dam to the South San Joaquin Municipal Utilities District certain quantities of water from the San Joaquin River and further admit that certain quantities of water have been stored, by the said United States Bureau of Reclamation for delivery to the South San Joaquin Municipal Utilities District, behind said Friant Dam, further admitting that except for such storage and diversions the flow of the San Joaquin River would normally and in the course of nature flow by, through and under certain of the lands described in plaintiffs' complaint, further admitting that said impounding of the said water and said delivery to the South San Joaquin Municipal Utilities District [952] has continued and is continuing from and after the date of filing this complaint, further admitting that said defendant, South San Joaquin Municipal Utilities District, made, executed and entered into a contract with the United States, as set forth, marked Exhibit "B" in plaintiffs' complaint.

VII.

In answer to paragraph VIII of plaintiffs' complaint on file herein, these answering defendants

allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and basing their denial on this ground, deny, generally and specifically, each and every allegation therein contained.

VIII.

In answer to paragraph IX of plaintiffs' complaint on file herein, these answering defendants, deny, generally and specifically, each and every allegation therein contained.

IX.

These answering defendants admit the allegations contained in paragraph X of plaintiffs' complaint on file herein.

X.

In answer to paragraph XI of plaintiffs' complaint on file herein, these answering defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained and, in basing their denial upon this ground, deny, generally and specifically, each and every allegation therein contained.

XI.

In answer to paragraph XIII of plaintiffs' complaint on file herein, these answering defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained and, basing their

denial upon this ground, deny, generally and specifically, each [953] and every allegation therein contained.

XII.

In answer to paragraph I of plaintiffs' amendment to complaint on file herein, these answering defendants reallege and replead all of the allegations, admissions and denials heretofore set forth as their answer to paragraphs I to XIII, inclusive, as though again fully set forth herein.

XIII.

In answer to paragraph II of plaintiffs' amendment to complaint on file herein, these answering defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph commencing on line 25 of page 1 of said amendment to complaint and terminating on line 6 of page 2 of the said amendment to complaint and, basing their denial upon this ground, deny, generally and specifically, each and every allegation therein contained; that these answering defendants deny, generally and specifically, each and every other allegation contained in said paragraph II of said amendment to complaint.

Third Defense

I.

That the defendant, Chowchilla Water District, is and was at all times herein mentioned a public

corporation formed, organized and existing under and by virtue of the laws of the State of California. That the defendants, Frank Justin, Duval Williams, H. P. Dower, Mark Van Elswyk and Charles Blaylock, are and were at all times herein mentioned the duly elected, qualified and acting directors of the said Chowchilla Water District, a public corporation.

II.

That the said Chowchilla Water District lies in Madera County, California, and contains within its boundaries a gross [954] area of 64,087 acres, of which approximately 54,173 acres are irrigable. That during the year 1951, approximately 45,600 acres were irrigated. That the population of the said District is approximately 9,000, of whom approximately 5,000 reside on farms and 4,000 in the City of Chowchilla. That there are approximately 1,704 land ownerships within the District. That the principal economy of the District and of the people residing therein is agriculture.

III.

That the total assessed valuation of the lands without improvements of the said District, in the year 1949, was $3,434,269.00. That crops grown in the District in 1949 produced a gross income of approximately $6,099,000.00. That the value of livestock within the said District in 1949 was approximately $4,740,000.00.

IV.

That prior to the year 1945, the sole source of water for irrigation purposes within the boundaries of said District was by pumping the said water from underground. That the continuous pumping by overlying land owners rapidly diminished the underground sources of water underlying the said lands, causing many wells in the area to fail. That the said overdraft of the underground water supply so greatly reduced the said underground water supply that it did not adequately irrigate the said lands as hereinbefore set forth and grow the said agricultural products as hereinbefore set forth. That the survival of the whole economic status of the lands and people lying within the boundaries of the District requires that a reasonable supply of water be made available to the said lands for the growing of the said crops. That a reasonable supply of water for the said lands is not available from underground sources and in order to supply the reasonable quantity of water required to irrigate the said lands it is [955] necessary to procure surface water from sources outside the boundaries of the District.

V.

That since the construction and operation of Friant Dam and the Reservoir and the Madera Canal by the United States Bureau of Reclamation, the lands lying within the said District have been supplied with supplemental surface water from sources lying outside of the boundaries of the Dis-

trict. That supplemental surface water has been delivered to lands lying within the boundaries of the District each year, commencing with the year 1945, from the said Friant Dam and Reservoir and the said Madera Canal.

VI.

That on the 5th day of July, 1950, the Chowchilla Water District made and entered into a certain agreement with the United States wherein and whereby the United States agreed to deliver to the Chowchilla Water District, through the Madera Canal from Friant Dam, 55,000 acre feet of Class 1 water, and not to exceed 160,000 acre feet of Class 2 water, as therein more particularly described. That said quantity of water, when so delivered by the United States, would be put to a reasonable and beneficial use by the Chowchilla Water District on lands within the boundaries of said District. That said quantity of water is necessary as a supplemental supply of water to prevent the overdraft upon the underground water supply of the lands within the District, so that said supply will not be depleted and will be sufficient, together with said supplementary water supply, to reasonably and beneficially irrigate the said irrigable lands within the said District.

VII.

That the Chowchilla Water District and the land owners within the boundaries thereof have constructed for the purpose of [956] delivering said

supplemental supply of water approximately sixty-seven (67) miles of lateral canals and five (5) miles of lateral pipe lines; that the said District uses approximately forty (40) miles of natural stream channels for the delivery of the said supplemental supply of water; that the said District and the land owners within the boundaries thereof have expended over 350,000.00 in the construction of said laterals and pipe lines.

VIII.

That if the injunction as prayed for by plaintiffs is granted, the United States will be unable to furnish these answering defendants with a supplemental water supply from Friant Dam through the Madera Canal. That the continued overdraft on the underground water supply of the lands within the District, without said supplemental water supply being furnished by the United States, will deplete the said underground water supply to such an extent that the irrigable lands within the boundaries of the District will become dry and unproductive. That these answering defendants are unable to secure from other sources than the United States a sufficient quantity of water to augment and supplement the said falling underground water tables. That the granting of said injunction will make useless the many miles of lateral canals and lateral pipe lines constructed as hereinbefore set forth, and all to the irreparable harm of the said District, the lands lying therein and the owners thereof. That these answering defendants allege

that with proper channelization work upon the said San Joaquin River below Friant Dam and above Mendota Pool, and with the reasonable extension of suction pipes, of pumps placed along said River to supply lands riparian thereto with a reasonable quantity of water for beneficial use for irrigation and domestic purposes, and that by the use of reasonable methods of diversion, and that by maintaining a live stream at no time greater than the natural flow of the River if Friant Dam were not [957] in operation or existence, that all of the needs and requirements of the riparian owners adjacent to the San Joaquin River and the owners of lands whose underground water supply is charged and recharged by the San Joaquin River can be met with a minimum flow down the said San Joaquin River below Friant Dam. That by such works and such diversion and the reduction of the flow of the River below Friant Dam the requirements of these answering defendants for a supplemental water supply may be met by the United States; that the water of the San Joaquin River will be put thereby to its highest, best and most profitable use.

Wherefore, defendants demand:

1. That this honorable court determine which lands described in plaintiffs' complaint are riparian to the San Joaquin River and are entitled to a reasonable quantity of water for irrigation and domestic use therefrom.

2. That this honorable court determine which lands described in plaintiffs' complaint on file herein

have their underground water strata charged and recharged from the San Joaquin River.

3. That this honorable court determine that the lands found to be riparian to the said San Joaquin River shall be entitled to a reasonable quantity of water for beneficial use thereon for irrigation and domestic purposes, and that sufficient water be allowed to flow in the San Joaquin River to furnish said riparian owners with said supply of water by the use of reasonable means of diversion from the said San Joaquin River by pumps, and further determine that channelization of the said San Joaquin River be made so as to reduce the quantity of water to be discharged from Friant Dam in order to supply said riparian lands with said quantity of water.

4. That this honorable court determine and adjudge that a live stream shall be maintained at all times between Friant Dam and the Whitehouse Gaging Station on said San Joaquin River, which [958] said live stream shall, at no time, be required to be in excess of the natural flow of the San Joaquin River if Friant Dam were not constructed and in operation, which said live stream shall be for the purpose of supplying the said quantity of water for use upon lands riparian to said San Joaquin River and to supply the underground percolating waters for lands determined to be entitled to a recharge from the San Joaquin River for said underground waters.

5. That this honorable court further determine that at no time a flow of greater than five (5)

second feet need pass the downstream boundary of the lowest riparian owner upon said River.

6. That the plaintiffs' prayer for injunction be denied.

7. That the court award to defendants their costs.

8. That the court grant such other and further relief as is meet and equitable in the premises.

GREEN, GREEN, PLUMLEY & KUNEY,

/s/ By DENSLOW GREEN,

Attorneys for Defendants: Chowchilla Water District, Frank Justin, Duval Williams, H. P. Dower, Mark Van Elswyk, and Charles Blaylock. [959].

Affidavit of Service by Mail Attached.

[Endorsed]: Filed October 11, 1951.

[Title of District Court and Cause.]

ANSWER

(So. San Joaquin to Complaint)

Comes now the defendant, Southern San Joaquin Municipal Utility District, a public corporation, and Milo Marshall, Albert Davis, Frank Panero, D. L. Shiflett and E. J. Girard, its Directors, and in answer to plaintiffs' complaint on file, and plaintiffs' Amended Complaint on file, admit, deny and allege as follows, to-wit:

I.

That said complaint and the amendment thereto fail to state a claim against these answering defendants, upon which relief can be granted.

II.

Answering Paragraph II of said complaint, said defendants have no information or belief upon the subject sufficient to enable them to answer the allegations of said Paragraph II, and placing [962] their denial upon that ground, deny generally and specifically, each and every, all and singular, the allegations of said Paragraph II of said complaint, except that said defendants admit that the San Joaquin River is a natural stream and water course and flows in its course toward the sea in a general Westerly direction to Mendota Dam, through Fresno, Madera, Merced, Stanislaus, San Joaquin and Contra Costa Counties, to its mouth in San Francisco Bay, and thence through said Bay to the Pacific Ocean.

III.

Answering Paragraph III of plaintiffs' complaint, said defendants have no information or belief upon the subject sufficient to enable them to answer the allegations of said Paragraph III, and placing their denial on that ground, deny generally and specifically, each and every, all and singular, the allegations of said Paragraph III of said complaint.

IV.

Answering Paragraph IV of plaintiffs' complaint, said defendants have no information or belief upon the subject sufficient to enable them to answer the allegations of said Paragraph IV, and placing their denial upon that ground, deny generally and specifically, each and every, all and singular, the allegations of said Paragraph IV of said complaint, and in this connection allege that the use of the flow of the river for the purpose of supporting the underground water, if any, in order to facilitate the pumping thereof from the underground strata, is a wasteful method of diversion and use.

V.

Answering Paragraph V of said complaint, said defendants deny generally and specifically, each and every, all and singular, the allegations thereof, except that said defendants admit that the United States of America, through the Bureau of Reclamation, constructed a dam across the San Joaquin River near Friant, [963] together with certain concrete canals and other diversion works, wherein were impounded and stored the waters of the San Joaquin River from one season to another and wherein will be impounded the flow of the San Joaquin River.

VI.

Answering Paragraph VI of said complaint, said defendants deny generally and specifically, each and every, all and singular, the allegations of said paragraph.

VII.

Answering Paragraph VII of said complaint, said defendants have no information or belief upon the subject sufficient to enable them to answer the allegations of said Paragraph VII, and placing their denial upon that ground deny generally and specifically, each and every, all and singular, the allegations of said Paragraph VII of said complaint.

VIII.

Answering Paragraph IX of plaintiffs' complaint, said defendants deny generally and specifically, each and every, all and singular, the allegations therein contained.

IX.

Answering Paragraph XI of plaintiffs' complaint, and including the amendment thereof described as XI-A, dated July 25, 1951, said defendants deny generally and specifically, each and every, all and singular, the allegations therein contained; and further deny that the plaintiffs, or any of them, represent any class or persons having any common or general interest with them; and further deny that any such class exists or has existed at any time since the commencement of this litigation.

X.

Answering Paragraph XIII of plaintiffs' complaint, said defendants have no information or belief upon the subject sufficient to enable them to

answer the allegations of said paragraph [964] XIII, and placing their denial upon that ground, deny generally and specifically, each and every, all and singular, the allegations of said Paragraph XIII of said complaint.

XI.

Answering Paragraphs I and II of the Amendments to the complaint of the plaintiffs, said defendants deny generally and specifically, each and every, all and singular, the allegations therein contained.

For and as an Affirmative Answer and Further Defense to Said Action, Said Defendants Allege:

I.

That from the year 1935 when it became generally known that the United States Government proposed to build a dam at Friant, Fresno County, California, and to direct from the San Joaquin River for delivery to the Madera Canal and the Friant-Kern, and to deliver water of the San Joaquin River to non-riparian land-owners of said river, the plaintiffs acquiesced in the building of said dam and canals, and the diversion of water and the storage of the same for the use of the Southern San Joaquin Municipal Utility District, and other irrigation districts, and took no action to restrain the same or to adjudicate their rights, if any, until the filing of this action, and by reason thereof and the appropriation and diversion of the

water for public use by the United States of America, the United States of America became the owner of the right to make such diversion and use, free and clear of all claims of the plaintiffs, and the sole remedy of the plaintiffs is in the United States Court of Claims, and not in this Court, for damage for the taking of any property of the plaintiffs, taken by the United States of America.

Wherefore defendants pray that plaintiffs take nothing by reason of their said cause of action, and that defendants go hence with their costs. [965]

/s/ J. O. REAVIS,
Attorney for Defendants Southern San Joaquin Municipal Utility District, a Public Corporation, Milo Marshall, Albert Davis, Frank Panero, D. L. Shifflet, and E. J. Girard, its Directors. [966]

[Endorsed]: Filed October 13, 1951.

[Title of District Court and Cause.]

ANSWER

(Madera Irrigation District to Complaint)

Come now the defendants Joseph A. Secara, Arnold Sallaberry, Chester A. Ridgeway, Earl Yocum and Carl Gaumnitz, as Directors of the Madera Irrigation District, a public corporation, and the Madera Irrigation District, a public corporation, and answering the amended complaint of plaintiffs on file herein admit, deny and allege, as follows:

I.

Answering Paragraph II of said complaint, said defendants have no information or belief upon the subject sufficient to enable them to answer the allegations of said Paragraph II, and placing their denial upon that ground deny generally and specifically, each and every, all and singular, the allegations of said Paragraph II of said complaint, except that said defendants admit [969] that the San Joaquin River is a natural stream and water course and flows in its course toward the sea in a generally westerly direction to Mendota Dam, through Fresno, Madera, Merced, Stanislaus, San Joaquin and Contra Costa Counties, to its mouth in San Francisco Bay, and thence through said Bay to the Pacific Ocean.

II.

Answer Paragraph III of plaintiffs' complaint, said defendants have no information or belief upon the subject sufficient to enable them to answer the allegations of said Paragraph III, and placing their denial upon that ground deny generally and specifically, each and every, all and singular, the allegations of said Paragraph III of said complaint.

III.

Answering Paragraph IV of plaintiffs' complaint, said defendants have no information or belief upon the subject sufficient to enable them to answer the allegations of said Paragraph IV, and placing their denial upon that ground deny generally and specifically, each and every, all and singular, the allegations of said Paragraph IV of said complaint,

and in this connection allege that the use of the flow of the river for the purpose of supporting the underground water, if any, in order to facilitate the pumping thereof from the underground strata, is a wasteful method of diversion and use.

IV.

Answering Paragraph V of said complaint, said defendants deny generally and specifically, each and every, all and singular, the allegations thereof, except that said defendants admit that the United States of America, through the Bureau of Reclamation, constructed a dam across the San Joaquin River near Friant, together with certain concrete canals and other diversion works, wherein were impounded and stored the waters of the San Joaquin River from one season to another, and wherein will be impounded [970] the flow of the San Joaquin River.

V.

Answering Paragraph VI of said complaint, said defendants deny generally and specifically, each and every, all and singular, the allegations of said paragraph.

VI.

Answering Paragraph VII of said complaint, said defendants have no information or belief upon the subject sufficient to enable them to answer the allegations of said Paragraph VII, and placing their denial upon that ground deny generally and specifically, each and every, all and singular, the allegations of said Paragraph VII of said complaint.

VII.

Answering Paragraph IX of plaintiffs' complaint, said defendants deny generally and specifically, each and every, all and singular, the allegations therein contained.

VIII.

Answering Paragraph XI of plaintiffs' complaint, and including the amendment thereof described as XI-A, dated July 25, 1951, said defendants deny generally and specifically, each and every, all and singular, the allegations therein contained; and further deny that the plaintiffs, or any of them, represent any class or persons having any common or general interest with them; and further deny that any such class exists or has existed at any time since the commencement of this litigation.

IX.

Answering Paragraph XIII of plaintiffs' complaint, said defendants have no information or belief upon the subject sufficient to enable them to answer the allegations of said Paragraph XIII, and placing their denial upon that ground deny generally and specifically, each and every, all and singular, the allegations of said Paragraph XIII of said complaint. [971]

X.

Answering Paragraphs I and II of the amendments to the complaint of plaintiffs, said defendants deny generally and specifically, each and every, all and singular, the allegations therein contained.

For and as an Affirmative Answer and Further Defense to Said Action, Said Defendants Allege:

I.

That ever since the year 1935, the intention of the Federal Government has been to build a dam at Friant and divert the water of the San Joaquin River, as alleged in plaintiffs' complaint, and said intention was a matter of general public notoriety and was well known to plaintiffs, and each of them, from said time; that, prior to the completion of said dam and when the same was partially completed, and on or about June 5, 1944, water was diverted and delivered therefrom to the Madera Irrigation District; that said deliveries amounted to 52,985 acre feet during the year 1944; that 127,500 acre feet was delivered in 1945, and 104,363 acre feet was delivered in 1946, and continuously thereafter water has been diverted from said dam and delivered to said Madera Irrigation District; that said Friant Dam was completed in the year 1945, and water has been diverted to the Madera Irrigation District prior to and since said date, and has been stored from year to year, and that all of the said diversions were for public use, to-wit: the sale, rental and distribution of water for the purpose of irrigation.

That during all of said times, plaintiffs acquiesced in the building of said dams and canals and the diversion of water and the storage of the same for the use of the Madera Irrigation District, and

took no action to restrain the same or to adjudicate their rights, if any, until the filing of this action, and by reason thereof and the appropriation and diversion of the water [972] for public use by the United States of America, the United States of America became the owner of the right to make such diversion and use, free and clear of all claims of the plaintiffs, and the sole remedy of the plaintiffs is in the United States Court of Claims for damages for the taking of any property of the plaintiffs taken by the United States for such purpose.

Wherefore, defendants pray that plaintiffs take nothing by reason of their said cause of action, and that defendants go hence with their costs.

DAVID E. PECKINPAH,
DENVER C. PECKENPAH,
HAROLD M. CHILD,
L. N. BARBER,
By /s/ HAROLD M. CHILD,

Attorneys for Defendants Joseph A. Secara, Arnold Sall berry, Chester A. Ridgeway, Earl Yocum and Carl Gaummitz, as Directors of the Madera Irrigation District, a Public Corporation, and the Madera Irrigation District, a Public Corporation. [973]

Duly Verified.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed October 13, 1951.

[Title of District Court and Cause.]

ANSWER

(By R. L. Boke, et al., etc. to Complaint)

Come now the defendants Richard L. Boke, individually and as Regional Director of the United States Bureau of Reclamation, Region 2; Martin H. Blote, individually and as Central Valley Project Operations Superintendent, United States Bureau of Reclamation, Region 2; Jack W. Rodner, individually and as District Manager of the San Joaquin Valley District of the United States Bureau of Reclamation; and Richard K. Durant, individually and as Construction Engineer in charge of distribution systems in the San Joaquin Valley District of the United States Bureau of Reclamation, and, for answer to the complaint, as amended to the date hereof, say:

First Defense

The complaint, as amended, fails to state a cause of action against these defendants, or either of them, upon which relief can be granted.

Second Defense

It affirmatively appears from the complaint, as amended, and from the record heretofore made in this cause, that the action is, in fact and in [982] law, an action against the United States of America, and seeks to affect its use of its property, and that the United States of America is an indispensable party hereto. The United States of Amer-

ica has not consented to the bringing of this suit and this court was and is without jurisdiction.

Third Defense

If affirmatively appears from the complaint, as amended, and from the record in this cause, that the plaintiffs have a plain, adequate, and complete remedy at law, by reason of which this action cannot be maintained.

Fourth Defense

It affirmatively appears from the complaint, as amended, and from the record of this cause, that plaintiffs seek by indirection to manage, operate, and control property of the United States of America, over which this court does not and cannot have jurisdiction.

Fifth Defense

I.

These defendants are employees of the United States of America, but neither have nor claim to have any right, power, or authority to do or perform any act touching or concerning the properties which are the subject matter of this suit, save and except to do, perform, and execute such lawful and authorized instructions as have or may hereafter be given them in carrying out the operation of the Central Valley Project, authorized by the Congress of the United States by the Emergency Relief Appropriation Act of 1935 (49 Stat. 115) and the First Deficiency Appropriation Act of 1936 (49

Stat. 1622), and acts amendatory thereof and supplementary thereto, and the Rivers and Harbors Act of August 16, 1937 (50 Stats. 884), and acts amendatory thereof and supplementary thereto; that all of the acts and things done by these defendants or either of them in connection with said Central Valley Project, including those acts and things complained of, have been done and performed by them and each of them under and pursuant to the lawful authority and direction of the Secretary of the Interior of the United States of America and the Commissioner of the Bureau of Reclamation of the United States of America. [983]

II.

These defendants deny that the underground and percolating water strata and subterranean streams, if any, supplied by the San Joaquin River, between Friant Dam and Mendota Pool on said river, extend to or encompass the areas alleged in the complaint, as amended, but are informed and believe, and so believing allege, that the contribution, if any, to said underground waters to the south of the San Joaquin River is inconsequential, if any, and north of the river does not at any point extend as much as two miles.

III.

Answering paragraph numbered III of the complaint, as amended, these defendants say that they are without knowledge or information sufficient to form a belief as to the truth of the allegations con-

tained therein, and can neither admit nor deny the same, but demand strict and proper proof thereof.

IV.

Answering paragraph numbered IV of the complaint, as amended, these defendants deny generally and specifically, each and every, the allegations therein contained, save and except these defendants are informed and believe, and therefore admit, that certain of the lands described in the complaint, as amended, have and are making beneficial use of small quantities of water diverted from the San Joaquin River; the exact nature and extent of the quantity of water so used, or of the method and manner of diversion thereof, and the legal description of the lands riparian to the river, or whose underground water supply is dependent upon its contribution, are unknown, and, if material to the plaintiffs' case, these defendants demand strict and proper proof thereof. Further answering paragraph numbered IV, these defendants deny that the plaintiffs, individually or collectively, have or will require all or even a substantial portion of the flow of the San Joaquin River in order to furnish them and each of them, as may be lawfully entitled thereto, a sufficient quantity of water for beneficial use for surface irrigation and domestic use upon their lands and to supply and maintain the underground percolating water strata. Further answering paragraph numbered IV, these defendants admit [984] certain commercial sand, gravel

and rock extraction plants are located on or near said span of said San Joaquin River, but they specifically deny that all or even a substantial portion of the waters of said San Joaquin River are needed or necessary to operate said commercial sand, rock and gravel extraction plants or renew sedimentary deposits.

V.

Answering paragraph numbered V of the complaint, as amended, these defendants deny generally and specifically, each and every, the allegations therein contained and, on the contrary, allege the plan of the Central Valley Project, approved by the Congress as set forth in paragraph numbered I of this defense, as it affects the San Joaquin River between Friant Dam, constructed, owned and operated by the United States, and Gravelly Ford, a point approximately thirty-seven miles westerly thereof, requires the Bureau of Reclamation to, and it will, recognize and respect existing water rights of all riparian owners, including such of the plaintiffs, if any, as are riparian owners on the San Joaquin River between Friant Dam and Gravelly Ford, as they exist under the laws of the State of California and which have not heretofore been acquired or adjusted by the United States. In order to accomplish this purpose, that is to say, to give that recognition to those rights which the laws of California require, it is the plan, purpose and intention of the Bureau of Reclamation to release at Friant Dam into the bed

of the river a sufficient quantity of water so as to enable said riparian owners between Friant Dam and Gravelly Ford to divert from the stream and to make reasonable beneficial use, by using reasonable methods of diversion and reasonable methods of use and purpose, the waters required for irrigation and domestic use, and in addition thereto to maintain a live stream in the river of not less than five second feet at Gravelly Ford.

The costs necessarily incurred of converting, altering or adapting such of the present diversionary facilities as are reasonable to facilitate diversion from the stream as it will exist, or as the flow will be altered under the operational plan herein set forth, will be borne by the Bureau of Reclamation, either as a direct charge or by way of reimbursement to the [985] owners of such costs necessarily incurred by them in such conversion of their presently existing facilities.

These defendants are informed and believe, and so believing allege, that the costs, if any, necessarily incurred by those diverting from the underground water table supplied or fed by the San Joaquin River, in adapting or adjusting their facilities to meet the change, if any, in said underground water supply caused or resulting from the reduced and controlled flow of the San Joaquin River, will likewise be borne by the Bureau of Reclamation, but these defendants are informed and believe, and therefore alleged, that the underground water supply will not be affected by the reduced

and controlled flow of the San Joaquin River under the operational plan aforesaid.

VI.

Answering paragraph numbered VI of the complaint, as amended, these defendants deny, generally and specifically, each and every allegation therein contained, except that these defendants admit that the Bureau of Reclamation has delivered to the Madera Irrigation District certain quantities of water diverted from the San Joaquin River at Friant and, under the authorized plan of the Central Valley Project, intends to store and divert at Friant and deliver certain quantities of water from the San Joaquin River, which said water so stored, diverted and delivered and to be delivered, except for such storage and diversion thereof, would normally and in the course of nature flow along and through the San Joaquin River.

VII.

Answering paragraph numbered VII of the complaint, as amended, these defendants deny, generally and specifically, each and every allegation therein contained, save and except that these defendants admit that the Bureau of Reclamation has delivered to the Southern San Joaquin Municipal Utility District certain quantities of water diverted from the San Joaquin River at Friant and, under the authorized plan of the Central Valley Project, intends to store and divert at Friant and deliver certain quantities of water from the San Joaquin

River, which said water so stored, diverted and delivered and to be delivered, except for such storage and diversion thereof, would normally [986] and in the course of nature flow along and through the San Joaquin River.

These defendants admit the execution, existence and effect of the contract between the United States of America and the Southern San Joaquin Municipal Utility District, attached to the complaint, as amended, marked Exhibit "B".

VIII.

Answering paragraphs numbered VIII and IX in the complaint, as amended, these defendants deny, generally and specifically, each and every allegation therein contained, and allege that all and singular, each and every, the acts and things done by them or either of them were pursuant to and in accordance with the authorization and authority of the Secretary of the Interior and the Commissioner of the Bureau of Reclamation in and in connection with the execution of the Central Valley Project, as authorized by the Congress of the United States, as set forth in paragraph numbered I of this defense; and these defendants further allege that the authorized and declared plan of operation of the Central Valley Project will not deprive plaintiffs or any or either of them, or any other person, firm or entity, of their water rights as they exist under the laws of the State of California or impair them or their exercise save and except in the manner hereinbefore alleged.

IX.

Answering paragraph numbered X, these defendants admit that an actual controversy exists between the plaintiffs on the one hand and between the United States of America and certain of the defendants on the other hand, with respect to the waters, property and property rights described in the complaint, as amended; but these answering defendants deny that any such dispute exists between plaintiffs and them, or either of them, and allege that neither they or either of them have or pretend to have the right, power or authority to subject the United States of America or its property or property rights to adjudication, regulation or control by this Honorable Court.

X.

These defendants are without knowledge or information sufficient [987] to form a belief as to the truth of the allegations of paragraph numbered XI of the complaint, as amended, and can neither admit nor deny the same, but, if they be material to plaintiffs' complaint, demand strict and proper proof thereof.

XI.

Answering paragraph numbered XIII of the complaint, as amended, these defendants deny, generally and specifically, each and every allegation therein contained, save and except the defendant Boke admits that he wrote and dispatched the letter attached to the complaint as Exhibit "C". Fur-

ther answering said paragraph, these defendants reaffirm and reallege the allegations of paragraph numbered V of the Fifth Defense, and say that all such representations as were made of or concerning the Central Valley Project and its plan of operation were and are in consonance therewith.

XII.

Answering paragraph numbered I of the amendment to the complaint filed herein, these defendants reallege and reaffirm all of the allegations, admissions and denials hereof as fully and completely as though assigned in specific traverse of said amendment.

XIII.

Answering paragraph numbered II of the amendment to the complaint, these defendants say they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and can neither admit nor deny the same, but, if they are material to plaintiffs' case, demand strict and proper proof thereof.

Wherefore, these defendants pray:

1. That this Honorable Court dismiss the complaint, as amended:

(a) for want of jurisdiction over the property of the United States of America;

(b) for want of jurisdiction over the United States of America; and

(c) for failure to state a cause of action against these defendants. [988]

2. That this Honorable Court determine which lands described in plaintiffs' complaint are riparian to the San Joaquin River and are entitled to a reasonable quantity of water for irrigation and domestic use therefrom.

3. That this Honorable Court determine which lands described in plaintiffs' complaint on file herein have their underground water strata charged and recharged from the San Joaquin River.

4. That this Honorable Court determine that the lands found to be riparian to the said San Joaquin River shall be entitled to a reasonable quantity of water for beneficial use thereon for irrigation and domestic purposes, and that sufficient water be allowed to flow in the San Joaquin River to furnish said riparian owners with said supply of water by the use of reasonable means of diversion from the said San Joaquin River by pumps, and further determine that channelization of the said San Joaquin River be made so as to reduce the quantity of water to be discharged from Friant Dam in order to supply said riparian lands with said quantity of water.

5. That this Honorable Court determine and adjudge that a live stream shall be maintained at all times between Friant Dam and Gravelly Ford on said San Joaquin River, which said live stream shall at no time be required to be in excess of the natural flow of the San Joaquin River if Friant

Dam were not constructed and in operation, which said live stream shall be for the purpose of supplying the said quantity of water for use upon lands riparian to said San Joaquin River and to supply the underground percolating waters for lands determined to be entitled to a recharge from the San Joaquin River for said underground waters.

6. That this Honorable Court further determine that at no time a flow of greater than five second feet need pass the downstream boundary of the lowest riparian owner upon said river between Friant Dam and Gravelly Ford.

7. That the plaintiffs' prayer for injunction be denied.

8. That the court award to defendants their costs. [989]

9. That the court grant such other and further relief as is meet and equitable in the premises.

ERNEST A. TOLIN,
United States Attorney,
JOSEPH F. McPHERSON,
Special Assistant to the
Attorney General,
/s/ By JOSEPH F. McPHERSON,
Attorneys for Defendants Richard L. Boke, Martin H. Blote, Jack W. Rodner, and Richard K. Durant. [990]

[Endorsed]: Filed October 15, 1951.

In the District Court of the United States, Southern District of California, Northern Division

EVERETT G. RANK, et al., Plaintiffs,

vs.

JULIUS A. KRUG, et al., Defendants.

PEOPLE OF THE STATE OF CALIFORNIA, Intervenor.

INTERVENOR'S ANSWER

(State of California to Complaint)

The People of the State of California, appearing through Edmund G. Brown, Attorney General of the State of California having been granted leave to intervene in the above entitled action and in pursuance to the order of Court made at Fresno, California, on the 29th day of August, 1951, hereby answer the complaint and amendments to the complaint of the plaintiffs and admits, denies and alleges as follows:

First Defense

Alleges that pursuant to Article XIV, section 3 of the Constitution of the State of California, the plaintiffs cannot demand, the defendants cannot allow, the Intervenor cannot permit, and the Court cannot require any waste or any unreasonable use or any unreasonable method of use or any unreasonable method of diversion of the water of the San Joaquin River. Alleges that the granting of

the relief prayed for in the first, second [993] and fifth prayers in the plaintiffs' complaint would cause or continue the waste, unreasonable use, unreasonable methods of use, and unreasonable methods of diversion of the water of the San Joaquin River, and would, in violation of Article XIV section 3 of the Constitution of the State of California, prevent said water from being put to beneficial use to the fullest extent of which it is capable. Alleges that under the circumstances in this action it is the duty of the Court to determine whether there is a physical solution whereby the plaintiffs may be supplied with the water which they may put to reasonable and beneficial use by reasonable methods of use and by reasonable methods of diversion. Alleges that it is in the public interest of the People of the State of California that the rights, if any, of the plaintiffs be protected by such a solution if the same is physically possible and feasible. Alleges that a physical solution or solutions are possible and feasible and that such solution or solutions will be offered to the Court by the Intervenor, as provided in the order of the Court dated August 29, 1951. Alleges that in the event the Court determines that no physical solution is feasible, it is the duty of the Court to relegate the plaintiffs to their remedies, if any, by way of damages.

II.

That the plaintiffs have no right to the whole flow of the San Joaquin River as alleged in the complaint; nor do the plaintiffs have the right to

any part of the flow of the river in excess of the amount of water which can be reasonably and beneficially used on their land by reasonable methods of use and by reasonable methods of diversion. That the plaintiffs have no right to insist on the continued use of their existing [994] methods of diversion and must submit to a physical solution whereby their reasonable and beneficial uses may be supplied. That if the plaintiffs' rights have been subjected to substantial impairment, they may be entitled to compensation, but they are not entitled to an injunction as prayed in the complaint because, in addition to the reasons stated in paragraph I of this First Defense, the impairment, if any, has been for the purpose of effectuating a public use of water as described in the State Water Plan. That it is not in the public interest of the People of the State of California to have the defendants enjoined from impounding water behind Friant Dam or transporting water of the San Joaquin River, or to have the several contracts between the United States and the defendant irrigation, municipal utility and other districts declared to be in violation of the rights, if any, of the plaintiffs or any of them.

Second Defense

I.

With respect to paragraph I of the said complaint:

The Intervenor denies that Julius A. Krug is the Secretary of the Interior; alleges that Michael W.

Straus is the Commissioner of the Bureau of Reclamation; alleges that Richard Boke is the Regional Director of Region 2 of the Bureau of Reclamation; alleges that Martin Blote is the Central Valley Project Operations Superintendent; admits that Jack Rodner holds the position alleged; denies that R. K. Dufant is the Construction Engineer or the Engineer in charge of Friant Dam. The Intervenor has no information or belief as to the remaining material allegations of paragraph I of the said complaint and due to this lack of information and belief, denies the remaining material allegations of said paragraph, except [995] that the Intervenor admits that the Madera Irrigation District and the Southern San Joaquin Municipal Utility District are agencies of the State of California and public corporations duly formed, organized, and existing under and by virtue of the laws of the State of California.

II.

With respect to paragraph II of the complaint:

The Intervenor admits the allegations of the first sentence of the said paragraph II. The Intervenor is informed and believes that the remaining allegations of the said paragraph II are not correct and on such information and belief denies the remainder of the said paragraph. The Intervenor further alleges on information and belief that if the San Joaquin River does in fact support, supply, sustain, and replenish the underground and percolating water as described in said paragraph II by seepage and percolation, the defendants do

not, have not, and do not intend to materially interfere with such seepage or percolation.

III.

With respect to paragraph III of the complaint: The Intervenor has no information or belief as to the ownership or right to possession of the land or the riparian status of such land as alleged in the said paragraph III and, due to the lack of information and belief, denies each and every material allegation of the said paragraph III, as to ownership, right to possession and riparian status. The Intervenor denies that at all times mentioned in the complaint the described lands, if any, are owned by the plaintiffs, were underlaid by or contained underground and percolating water, water strata, or subterranean streams which are fed by, supplied by, sustained by, supported by, and replenished by [996] seepage and percolation from the San Joaquin River.

IV.

With respect to paragraph IV of the complaint: The Intervenor denies that the plaintiffs and their predecessors in title and interest are using all the water of the San Joaquin River and that all such water is or will be needed by the plaintiffs; denies that what use is being made of the water of the San Joaquin River by the plaintiffs is being diverted by reasonable means of diversion or is being put to use by reasonable methods of use. The Intervenor denies that the pumps, wells,

ditches, concrete pipelines, and conduits being used by the plaintiffs, as described in the said paragraph IV, are constructed and maintained in accordance with the recognized and generally accepted engineering standards and practices; and denies that all of the water deposited or used upon the lands of the plaintiffs, as described in the said paragraph IV, is deposited and used in accordance with the best recognized and accepted agricultural standards and practices.

The Intervenor denies that the plaintiffs, or any of them, have any legal interest to complain of the alleged interference, if any, with fish life, fishing, boating, camping, picnicking, general resort and recreational purposes.

The Intervenor denies that all of the water of the San Joaquin River is needed or necessary to operate the commercial sand, rock, and gravel extractions as described in the said paragraph IV.

The Intervenor denies that the plaintiffs are owners of, need, or are entitled to the use of all of the flow of the water of the San Joaquin River. [997]

The Intervenor has no information or belief as to the remaining allegations of the said paragraph IV and, due to such lack of information or belief, denies each and every material allegation of the said paragraph IV.

V.

With respect to paragraph V of the complaint: The Intervenor denies each and every material allegation of the said paragraph V.

VI.

With respect to paragraph VI of the complaint: The Intervenor denies each and every material allegation of the said paragraph VI, except that the Intervenor admits that water has been delivered to the Madera Irrigation District, and alleges that such water has been put to a reasonable, beneficial and public use.

VII.

With respect to paragraph VII of the complaint: The Intervenor denies that Exhibit "B" is a true copy of the contract between the United States and the Southern San Joaquin Municipal Utility District and denies each and every material allegation of the said paragraph VII, except that the Intervenor admits that a contract substantially similar to the contract referred to in the said paragraph VII as Exhibit "B" was executed with the Southern San Joaquin Municipal Utility District on the 18th day of October, 1945, and further alleges that this contract has been declared by the Superior Court of the State of California, County of Kern, on the 21st day of April, 1950 and that such contract provides for a public use of the water to which it relates.

The Intervenor denies that Harold Ickes is a defendant in this action. [998]

VIII.

With respect to paragraph VIII of the complaint:

The Intervenor has no information or belief as to the alleged demands of the plaintiffs described in the said paragraph VIII and, due to lack of information or belief, denies each and every material allegation of the said paragraph VIII. The Intervenor alleges that it is informed and believes and on the basis of such information and belief alleges that the defendants do, always have, and will continue to, release sufficient quantities of water from Friant Dam to make available to the plaintiffs all the water they can reasonably and beneficially use on their land, by reasonable methods of use and by reasonable methods of diversion.

IX.

With respect to paragraph IX of the complaint: The Intervenor denies each and every material allegation of the said paragraph IX.

X.

With respect to paragraph X of the complaint: The Intervenor admits that an actual controversy exists.

XI.

With respect to paragraph XI of the complaint: The Intervenor denies that the defendants do now, ever have, or intend to, unlawfully interfere with the rights of the plaintiffs or those similarly situated as described in the said paragraph XI. The Intervenor admits that the subject matter involved in this case is one of common and general interest to many persons, but denies [999] that it

is impracticable to bring those similarly situated to the plaintiffs before the Court.

The Intervenor alleges that it is practicable to specifically describe the land involved and the name of the persons affected by the alleged unlawful acts of the defendants.

The Intervenor alleges that until such parties are named and such areas are described, the Intervenor cannot ascertain the extent of the area allegedly affected by the acts of the defendants, and, therefore, denies that there are 50,000 acres of riparian land or that there are 500,000 acres of land overlying the underground and percolating water, water strata, and subterranean streams fed by, sustained by, supplied by, upheld by, and into which the said waters of the San Joaquin River percolate, seep, and flow between Friant and Mendota Dams.

XII.

With respect to paragraph XIII of the complaint:

The Intervenor has no information or belief concerning the matters alleged in the said paragraph XIII and, due to the lack of information or belief, denies each and every material allegation of the said paragraph XIII.

XIII.

With reference to paragraph II of the amendment fo the complaint dated February 3, 1950:

The Intervenor denies each and every material allegation of the said paragraph II.

XIV.

With reference to paragraph XI-A of the amendment to the complaint dated July 25, 1951: [1000]

The Intervenor alleges that it has no information or belief concerning the allegations of said paragraph XI-A and because of such lack of information or belief denies each and every material allegation of the said paragraph XI-A.

XV.

The Intervenor alleges that the amendments to the complaint dated September 16, 1949, September 30, 1949, and March 8, 1950, referred to in the opinion of the Court dated April 13, 1950 (90 Fed. Supp. 773, 779) have not been served on said Intervenor.

Wherefore, the Intervenor prays:

(1) That all parties similarly situated to the plaintiffs be brought before the Court as provided in section 19 (b) of the Federal Rules of Civil Procedure and that respective areas in which said parties are interested be properly identified, to the end that complete relief be afforded in this proceeding.

(2) That each and every prayer of the complaint be denied, except prayer No. 3 as to which

prayer the Intervenor also prays that the Court make a physical solution.

(3) That the Court grant such other relief as is proper in the premises.

/s/ EDMUND G. BROWN,
Attorney General,
/s/ ARVIN B. SHAW, JR.,
Assistant Attorney General,
/s/ B. ABBOTT GOLDBERG,
Deputy Attorney General, Attorneys for the People of the State of California. [1001]

Affidavit of Service by Mail Attached.

[Endorsed]: Filed October 16, 1951.

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS TO AMENDED COMPLAINT

(Lindsay-Strathmore Irrigation District, et al.)

Come now the defendants Lindsay-Strathmore Irrigation District, Lindmore Irrigation District, Ivanhoe Irrigation District, Saucelito Irrigation District, Orange Cove Irrigation District, Tulare Irrigation District, Lower Tule River Irrigation District, Stone Corral Irrigation District, Terra Bella Irrigation District, Porterville Irrigation District and Delano-Earlimart Irrigation District and Exeter Irrigation District and answer the plaintiffs' complaint as amended in the above entitled action as follows: [1006]

I.

Allege that each and all these answering defendants are irrigation districts duly organized and existing under the laws of the State of California; that each and all these answering defendants are parties to or are in process of negotiating contracts with the United States of America for delivery of water from the San Joaquin River by means of the Friant Dam and the Friant-Kern Canal of the Central Valley Project of California; that it is the intent, purpose and effect of the operation of said Central Valley Project of California and of said contracts between these answering defendants and the United States of America that water rights will be acquired and held by the United States for the use and benefit of these answering defendants, among other water users making use of the works of said Central Valley Project of California, and the United States holds in trust for these answering defendants, as ultimate beneficiaries thereof, all water necessary to meet the requirements of said contracts; that all the waters of the San Joaquin River are and will be necessary to supply the reasonable needs of these answering defendants and other water users from said Central Valley Project, in the course of the operation of said Project, and that all such water will be reasonably, beneficially and necessarily used for farming purposes, domestic purposes and for livestock to drink; that attached hereto marked Exhibit "A" and by this reference made a part hereof is a statement of the maximum amounts of water

to be supplied to these answering defendants in each year under said contracts; that these answering defendants were named and sued herein under fictitious names as defendant John Doe Districts.

II.

Answering Paragraph II of plaintiffs' complaint these answering defendants admit that the San Joaquin River is and at all times mentioned in said complaint has been a natural stream [1007] and water course in the general geographical location described in said Paragraph II, but that these answering defendants do not have sufficient knowledge, information or belief to answer the remaining allegations of said paragraph, and for lack of such knowledge, information and belief deny each and all thereof.

III.

These answering defendants do not have sufficient knowledge, information or belief to enable them to answer Paragraph III of said complaint; and for lack of such knowledge, information and belief deny each and all the allegations thereof, and particularly deny that either or any of the persons therein named are the owners of all or any part of, or any interest in the lands therein referred to, and particularly deny that said lands or any part thereof are or have ever been entitled to riparian or other water rights of any description or in any amount supplied by the flow of the San Joaquin River or any part thereof.

IV.

That except for the quotations from the California Fish & Game Code hereinafter referred to these answering defendants do not have sufficient knowledge, information or belief to enable them to answer Paragraph IV of said complaint, and for lack of such knowledge, information and belief deny each and all the allegations made and contained in said Paragraph IV, and particularly deny that said plaintiffs have used any of the waters referred to in said paragraph for any useful or beneficial purpose as alleged in said paragraph, or otherwise, or at all, and particularly deny that said plaintiffs or any of them are the owners of or need or are entitled to the use of the flow of said San Joaquin River, or any part thereof; and further answering said Paragraph IV these answering defendants allege that the provisions of the California Fish & Game Code quoted in said Paragraph IV are irrelevant and immaterial, and have no bearing upon any issue now [1008] in this case.

V.

That these answering defendants admit the allegations of Paragraph V of said complaint, except that these answering defendants deny that either or any of the acts and works therein referred to are now or have ever been or will be illegal, unlawful, without right or in excess of the authority of the parties performing the same, and except that these answering defendants deny that the wa-

ters used and diverted in the operation of said Central Valley Project are diverted and used for the owners of, or upon, lands having no rights to the waters of the San Joaquin River, and in this connection these answering defendants allege that the United States of America holds, and these answering defendants are beneficiaries of, rights in the waters of said San Joaquin River acquired by purchase, by exchange, by appropriation and by other means of acquisition in an amount equal to the entire flow of said San Joaquin River, and these answering defendants, for lack of knowledge, information and belief with respect thereto, further deny that the plaintiffs, or any of them, or their lands, or any part thereof, own or need or may beneficially use all or any part of the waters referred to in said Paragraph V.

VI.

These answering defendants do not have sufficient knowledge, information or belief to enable them to answer Paragraph VI of said complaint, and for lack of such knowledge, information and belief deny each and all the allegations therein contained as to all and every part of the lands and all and every part of the waters referred to in said paragraph.

VII.

These answering defendants do not have sufficient knowledge, information or belief to enable them to answer Paragraph VII of said complaint, and for

lack of such knowledge, information and [1009] belief deny each and all the allegations therein contained as to all and every part of the lands and all and every part of the waters referred to in said paragraph.

VIII.

These answering defendants do not have sufficient knowledge, information or belief to enable them to answer Paragraph VIII of said complaint, and for lack of such knowledge, information and belief deny each and all the allegations therein contained as to all and every part of the lands and all and every part of the waters referred to in said paragraph.

IX.

These answering defendants do not have sufficient knowledge, information or belief to enable them to answer Paragraph IX of said complaint, and for lack of such knowledge, information and belief deny each and all the allegations therein contained as to all and every part of the lands and all and every part of the waters referred to in said paragraph.

X.

These answering defendants admit the allegations of Paragraph X of said complaint.

XI.

These answering defendants do not have sufficient knowledge, information or belief to enable them to answer Paragraph XI, including the

amendment thereof described as Paragraph XI-A dated July 25, 1951, of said complaint, and for lack of such knowledge, information and belief deny each and all the allegations contained in said Paragraph XI and the amendment thereof described as Paragraph XI-A as to all and every part of the lands and all and every part of the waters referred to in said paragraphs, and particularly deny that plaintiffs or either of them represent any class of persons having any common or general interest with said plaintiffs, and further deny that any such class exists, or has [1010] existed at any time at or since the commencement of this litigation.

XII.

That these answering defendants admit the allegations of Paragraph XII of said complaint, and, insofar as these answering defendants are concerned, refer to the allegations of Paragraph I of this Answer.

XIII.

These answering defendants do not have sufficient knowledge, information or belief to enable them to answer Paragraph XIII of said complaint, and for lack of such knowledge, information and belief deny each and all the allegations therein contained as to all and every part of the lands and all and every part of the waters referred to in said paragraph.

XIV.

These answering defendants answer the amendment to plaintiffs' complaint dated February 3,

1950 by incorporating herein by this reference all the within and foregoing paragraphs of this Answer and by denying each and all the allegations made and contained in Paragraph II of said amendment to said complaint, except that these answering defendants admit that the citations referred to in said Paragraph II constitute laws of the United States, with whatever legal effect is attached thereto, and in this connection these answering defendants allege that the Central Valley Project of California has been and is being constructed under laws and constitutional enactments of the United States and of the State of California.

As a Second, Separate and Distinct Defense to Plaintiffs' Complaint These Answering Defendants Admit, Deny and Allege as Follows:

I.

Incorporate herein by this reference each and all the [1011] allegations of Paragraphs I to XIV both inclusive, in the within and foregoing Answer.

II.

Allege that Central Valley Project is a multiple-purpose project designed and planned for the general purposes of irrigation of arid lands in the Great Central Valley of California, improvement of navigation, river regulation, flood control, incidental development of hydroelectric power, repulsion of salt water within the delta of the Sacra-

mento and San Joaquin Rivers, and other purposes; that the Great Central Valley of California is the valley which lies in the basin of the Sacramento and San Joaquin Rivers, and their tributaries; that said project contemplates the use in said valley, for irrigation, municipal, domestic, power and other beneficial and public purposes, of the water of the Sacramento and San Joaquin Rivers and their tributaries, that said waters arise, flow and discharge into the Pacific Ocean wholly within the State of California; that said project was planned and generally designed by the State of California; that the plans, purposes and features of said project are substantially as set out and described in Bulletins Nos. 25, 26 and 29 of the Division of Water Resources, Department of Public Works, of the State of California, which bulletins constitute reports submitted by said division to the California Legislature of 1931 pursuant to acts of said Legislature requiring the preparation and submission of said reports; that said bulletins are hereby referred to and incorporated by reference in this answer. That the coordinated plan for the conservation, development and utilization of the water resources of the State as set forth in said bulletins, among others, has been approved and adopted by the Legislature of the State as the State Water Plan.

III.

Allege that by the act of its Legislature adopted August 5, 1933 [1012] and effective January 13,

1934 (California Statutes 1933, p. 1042) the State of California authorized the construction of the Central Valley Project and created a state agency designated "Water Project Authority of the State of California," and authorized said Authority to construct, maintain and operate said project and to use therefor the proceeds of sale of certain state bonds authorized by said Act; that following the adoption of said Act it became and was impracticable for the State to sell said bonds and construct the project; that by the Acts of Congress designated the Emergency Relief Appropriation Act of 1935 and the Rivers and Harbors Act of 1935, by executive orders signed by the President September 10, 1935, and November 16, 1935, a finding of feasibility signed by the Secretary of the Interior and approved by the President December 2, 1935, and the Acts of Congress designated the Rivers and Harbors Act of 1937, and the Rivers and Harbors Act of 1940, and the Act of Congress approved October 14, 1949, Public Law No. 356, 81st Congress, first session, and the Act of Congress approved September 26, 1950, Public Law 839, 81st Congress, second session, the Secretary of the Interior was authorized to construct said Central Valley Project and has undertaken and entered into the construction of said project; that the major engineering features of said project have been constructed; and that in this work the United States is proceeding in substantial accord with the State Water Plan.

IV.

Allege that the major engineering features of said project include:

(1) Shasta Dam and reservoir and hydroelectric power plant on the Sacramento River in Shasta County, California, with certain electric transmission lines leading from said power plant, and appurtenances thereof;

(2) Contra Costa Conduit, a canal leading from the [1013] Sacramento-San Joaquin delta to the vicinity of Martinez;

(3) Delta Cross-Channel, to conduct water of and from the Sacramento River and its tributaries across the said delta to the lower San Joaquin River, together with the Tracy Pumping Plant and the Delta-Mendota Canal, to convey water from said Delta Cross-Channel to the Mendota Pool in the San Joaquin River;

(4) Friant Dam and reservoir on the Upper San Joaquin River near Friant, Fresno County;

(5) Madera Canal, to conduct water stored in Friant reservoir northerly to a point on Chowchilla River;

(6) Friant-Kern Canal, to conduct water stored in Friant reservoir southerly to a point on Kern River near Bakersfield.

V.

Allege that the contract dated July 27, 1939, between the United States and the San Joaquin and Kings River Canal and Irrigation Company, Incorporated, and other corporations, commonly re-

ferred to as the "Exchange Contract", and by the contract dated July 27, 1939, between the United States and Miller & Lux Incorporated and Gravelly Ford Canal Company, corporations doing business in California, and by other comparable contracts, the United States acquired certain appropriative and prescriptive rights, contract rights and estoppels against the exercise by said companies and others of riparian and prescriptive rights, claimed by them to use for irrigation and other purposes, waters of the San Joaquin River and its tributaries, and the United States in said "Exchange Contract" agreed to deliver to the contracting companies, in lieu and in exchange for their rights to the flow of the San Joaquin River, certain waters of the Sacramento River and its tributaries, to be imported to Mendota Pool through and by means of the Delta Cross-Channel, Tracy Pumping Plant and the Delta-Mendota Canal; that the United States entered into all of said contracts herein referred to in order that it might be able [1014] to store in Friant Reservoir, free of the claims of any other parties, waters of the San Joaquin River arising above said reservoir and divert the same northerly through the Madera Canal and southerly through the Friant-Kern Canal, for irrigation of lands in the counties extending from Madera to Kern, in general along the easterly side of the San Joaquin Valley floor; that it is intended and proposed that the United States shall divert and deliver waters impounded in Friant Reservoir sometimes known as Millerton Lake and convey the

same through Friant-Kern Canal for irrigation of the lands in these answering defendant districts; that the State Water Plan requires that there be but a minimal flow, if any, between Friant Dam and Mendota Pool to achieve the diversion and delivery described above.

VI.

Allege that the State of California, acting through its Department of Finance and Director of Finance, pursuant to certain statutes adopted by the Legislature of California, heretofore filed certain applications with the Division of Water Resources of the Department of Public Works of California for the appropriation of unappropriated waters of the Sacramento and San Joaquin Rivers and their tributaries, for the use and benefit of the Central Valley Project and the owners of lands to be irrigated therefrom; that by assignments, made pursuant to said Statutes, the State of California, acting through its Department of Finance and Director of Finance, assigned to the United States for the use and benefit of said Central Valley Project certain of said applications, to-wit: by assignment dated September 3, 1938, assigned Application No. 5625 to appropriate water of the Sacramento River at Shasta Dam for power purposes, and Application No. 5626 to appropriate water of the Sacramento River at Shasta Dam for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9364 to appropriate water of the Sacramento River

[1015] at points of diversion located along the Sacramento River from Shasta Dam to the Sacramento-San Joaquin Delta and on the channels of said delta, for irrigation and domestic use, saline and flood control, and navigation purposes, and Application No. 9365 to appropriate water of the Sacramento River at Shasta Dam for power purposes; and by assignment dated September 30, 1939, assigned Application No. 5637 to appropriate water of the San Joaquin River at Friant Dam for power purposes, and Application No. 5638 to appropriate water of the San Joaquin River at Friant Dam for irrigation, domestic and flood control purposes, and Application No. 9369 to appropriate water of the San Joaquin River at Temperance Flat Dam in Sections 24 and 25, T. 10, S.R. 21 E. M.D.B.&M. and at Friant Dam for irrigation, domestic and flood control purposes; that true copies of said assignments dated September 3, 1938 and September 30, 1939 are attached to the Complaint In Intervention of the State of California herein, respectively marked Exhibits "A" and "B", reference to which Complaint In Intervention is hereby made for further particulars.

VII.

Allege that by virtue of the terms of said assignments the State of California has become and is the trustor or grantor of an express trust; the United States has become and is the trustee of that trust; the landowners to acquire rights to the use of water from the works of the Central Val-

ley Project, including the landowners of defendant district, have become and are the beneficiaries of that trust; that any and all claims or interests of the United States obtained by the "Exchange Contract" and similar or comparable contracts, and under the assignments hereinabove referred to are held by the United States as such trustee under said express trust and as a part of a trust fund or res for the use and benefit of the Central Valley Project and the landowners to acquire rights to the use of water from the works of said project, and in particular the [1016] landowners of defendant districts; that the State of California, as trustor or grantor and as parens patriae, is entitled to be heard, among other things, as to all matters relating to the administration and execution of said trust by said trustee and entitled to require that the trustee administer said trust according to its true intent and meaning.

VIII.

Allege that said Central Valley Project will provide a stabilized source of supplemental water supply for irrigation and other purposes for many hundreds of thousands of acres of land now under cultivation and irrigation in the Great Central Valley of California; that the construction, operation and maintenance of said Central Valley Project will profoundly affect the economy and welfare of the people of at least 21 of the 58 counties of California, embracing more than half of the cultivated agricultural lands of the State.

IX.

That pursuant to Article XIV, section 3 of the Constitution of the State, the plaintiffs cannot demand and the defendants cannot permit any wasteful or prodigal use of the water of the San Joaquin River. That the plaintiffs have no right to the whole flow of the San Joaquin River as alleged in paragraph IV of the complaint, nor do the plaintiffs have the right to any part of the flow of the river in excess of the amounts required to meet their reasonable needs for irrigation and domestic uses. That the plaintiffs have no right to insist on the uninterrupted use of their existing diversion devices and must submit to a physical solution whereby their reasonable needs and uses may be supplied; that this court has the power and duty of requiring a physical solution. That if the plaintiffs' rights have been subjected to substantial impairment, they may be entitled to compensation, but they are not entitled to an injunction as prayed in the complaint [1017] because the impairment, if any, has been for the purpose of effectuating a public use as described in the State Water Plan.

As A Third, Separate And Distinct Defense to Plaintiffs' Amended Complaint These Answering Defendants Allege:

I.

That said amended complaint fails to state facts sufficient to constitute a cause of action in favor of said plaintiffs or either of them against these answering defendants or either of them.

As A Fourth, Separate And Distinct Defense to Plaintiffs' Amended Complaint These Answering Defendants Allege:

I.

That said action is in fact and in law primarily against the United States, and affects the use of its property by the United States; that the United States is an indispensable party to this action and has not given its consent to be sued herein.

Wherefore these answering defendants pray that plaintiffs take nothing by their amended complaint and that this action be forthwith dismissed with prejudice; or if this action is not so dismissed:

(1) That the rights of the plaintiffs and defendants be determined according to the laws of the State of California;

(2) That the injunction as prayed for in the complaint be denied and that a physical solution, if possible, be directed;

(3) That the impairment, if any, of the plaintiffs' rights to be declared to be for a public use, and the plaintiffs relegated to their remedy by damages;

(4) That these answering defendants have fur-

ther relief as to the Court may seem equitable and proper in the premises.

JAS. R. McBRIDE,
MADDOX & ABERCROMBIE,
ERLING H. KLOSTER,
/s/ By JAMES K. ABERCROMBIE,
Attorneys for Defendants Lindsay-Strathmore Irrigation District and Lindmore Irrigation District. [1018]

JAS. R. McBRIDE,
E. I. FEEMSTER,
MADDOX & ABERCROMBIE,
ERLING H. KLOSTER,
/s/ By JAMES K. ABERCROMBIE,
Attorneys for Defendant
Ivanhoe Irrigation District.

LEROY McCORMICK,
MADDOX & ABERCROMBIE,
ERLING H. KLOSTER,
/s/ By JAMES K. ABERCROMBIE,
Attorneys for Defendants Saucelito Irrigation District and Orange Cove Irrigation District.

CALVIN L. RUSSELL,
RUSSELL B. HENRY,
MADDOX & ABERCROMBIE,
ERLING H. KLOSTER,
/s/ By JAMES K. ABERCROMBIE,
Attorneys for Defendants Lower Tule River Irrigation District and Tulare Irrigation District.

JOHN R. LOCKE,
MADDOX & ABERCROMBIE,
ERLING H. KLOSTER,
/s/ By JAMES K. ABERCROMBIE,
Attorneys for Defendant Stone Corral Irrigation District.

MADDOX & ABERCROMBIE,
ERLING H. KLOSTER,
/s/ By JAMES K. ABERCROMBIE,
Attorneys for Defendants Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District and Delano-Earlimart Irrigation Distict. [1019]

EXHIBIT "A"

Contractual Requirements of These Defendant Irrigation District:

District	No. of Acre Feet of Class 1 Water Per Year	No. of Acre Feet of Class 2 Water Per Year
Lindsay-Strathmore Irrigation District	30,000	None
Lindmore Irrigation District	33,000	22,000
Ivanhoe Irrigation District	7,700	7,900
Stone Corral Irrigation District	10,100	None
Lower Tule River Irrigation District	40,000	274,000
Tulare Irrigation District	30,000	141,000
Orange Cove Irrigation District	31,300	None
Saucelito Irrigation District	15,300	32,800
Delano-Earlimart Irrigation District	108,000	74,500
Terra Bella Irrigation District	29,000	None
Exeter Irrigation District	10,100	19,000
Porterville Irrigation District	16,000	30,000
	360,900	601,200

Duly Verified.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed October 16, 1951.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR PERMISSION TO FILE COMPLAINT IN INTERVENTION

To Michael W. Straus, as Commissioner of the Bureau of Reclamation of the United States of America, Richard Boke, as Regional Director of the Bureau of Reclamation of the United States of America, Martin Blote, as Regional Water Master of the Bureau of Reclamation of the United States of America, Jack Rodner, as District Manager of the Bureau of Reclamation of the United States of America, R. K. Durant, as Construction Engineer and Resident Engineer at Friant Dam for the Bureau of Reclamation of the United States of America, Julius A. Krug, Michael W. Straus, Richard Boke, Martin Blote, Jack Rodner and R. K. Durant, and Ernest A. Tolin, Irl D. Brett, Francis B. Critchlow, Ralph S. Boyd and Joseph F. McPherson, their attorneys; Madera Irrigation District and Joseph A. Secara, Arnold Sallaberry, Chester Ridway, Earl Yocum and Carl Gaumnitz, as Directors of the Madera Irrigation District, and David E. Peckinpah, Denver C. Peckinpah, Harold M. Child and L. N. Barber, its and their attorneys; Southern San Joaquin Municipal Utility District, a public corporation, and Milo Marshall, Albert Davis, Frank Panero, D. L. Shifflep and E. J. Girard, as Directors of Southern San Joaquin Municipal Utility District, and J. O. Reavis, its and

their attorney; Chowchilla Water District, and Frank Justin, Duval Williams, H. P. Dower, Mark Van Elswyk and Charles Blaylock, Directors of Chowchilla Water District, and Green, Green, Plumley & Kuney, Denslow Green, its and their attorneys, Lindsay-Strathmore Irrigation District and Lindmore Irrigation District, Maddox & Abercrombie and Erling H. Kloster, their attorneys; Ivanhoe Irrigation District, Jas. R. McBride, and E. I. Feemster, Maddox & Abercrombie and Erling H. Kloster, its attorneys; Saucelito Irrigation District and Orange Cove Irrigation District, LeRoy McCormick, Maddix & Abercrombie and Erling H. Kloster, their attorneys; Tulare Irrigation District and Lower Tule River Irrigation District, Calvin L. Russell and Russell B. Henry, Maddox & Abercrombie and Erling H. Kloster, their attorneys; Stone Corral Irrigation District, John R. Locke, Maddox & Abercrombie and Erling H. Kloster, its attorneys; Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District and Delano-Earlimart Irrigation District, Maddox & Abercrombie and Erling H. Kloster, their attorneys; State of California and to Edmund G. Brown, Attorney General, Arvin B. Shaw, Assistant Attorney General, and B. Abbott Goldberg, Deputy Attorney General, Attorneys for the People of the State of California: [1092]

You, and Each of You, Will Please Take Notice that Complainant in Intervention, Emil Schramm,

will move the above entitled court for leave to file a Complaint in Intervention in the above entitled action; said motion will be made before the Honorable Peirson M. Hall, District Judge, at the Court Room of the above entitled Court, Federal Building, Los Angeles, California, on the 15th day of January, 1952, at the hour of 10:00 o'clock A.M., or as soon thereafter as counsel may be heard; said motion will be made upon the ground that the applicant is or may be bound by judgment in the action, and upon the ground that the applicant is so situated as to be adversely affected by a distribution or other distribution of property which is subject to the control or distribution of the above entitled court.

Said motion will be further based upon all of the pleadings on file herein, this Notice of Motion for Permission to File Complaint in Intervention and the proposed Complaint in Intervention, a copy of which is annexed hereto and expressly made a part hereof.

Dated: January 7, 1952.

/s/ CLAUDE L. ROWE,
Attorney for Complainant in
Intervention, Emil Schramm.

[Endorsed]: Filed January 8, 1952.

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Fresno—ss.

M. Anderson, being first duly sworn, deposes and says:

That she is a citizen of the United States and a resident of Fresno County, California; that her business address is 910 Security Bank Building, Fresno 21, California; that she is over the age of eighteen years of age and not a party to the above entitled action.

That on the 7th day of January, 1952, she deposited in the United States mails in the post office at Fresno, California, in the above entitled action, in an envelope bearing the requisite postage, a copy of each of the following:

1. Notice of Permission to File Complaint In Intervention in the above entitled matter;

2. Proposed Complaint In Intervention in the above entitled matter, [1094]

addressed to each of the following:

Ernest A. Tolin, United States Attorney, Federal Building, Los Angeles 12, California;

Irl D. Brett, Francis B. Critchlow, Ralph S. Boyd, Joseph F. McPherson, Department of Justice, Lands Division, Federal Building, Los Angeles 12, California;

Green, Green, Plumley & Kuney, and Denslow Green, 219 South "D" Street, Madera, California;

J. O. Reavis, Esq., 15 First National Bank Bldg., 820 Tenth Avenue, Delano, California;

Maddox & Abercrombie, James K. Abercrombie, and Erling H. Kloster, 410 Bank of America Building, Visalia, California;

E. I. Feemster and Jas. R. McBride, Security First National Bank Building, Lindsay, California;

Edmund G. Brown, Attorney General, and Arvin B. Shaw, Jr., Assistant Attorney General, 835 Rowan Building, Los Angeles, California;

B. Abbott Goldberg, Deputy Attorney General, 600 State Building, San Francisco 2, California;

LeRoy McCormick, Esq., 420 Bank of America Building, Visalia, California;

David E. Peckinpah, Denver C. Peckinpah, Harold M. Child, and L. N. Barber, 431 Brix Building, Fresno, California;

Calvin L. Russell and Russell B. Henry, 224 East Tulare Street, Tulare, California;

John R. Locke, Jr., 127 North Church Street, Visalia, California;

That there is a delivery service by United States mail from the above named post office to each of the above addresses.

/s/ M. ANDERSON.

Subscribed and sworn to before me this 7th day of January, 1952.

[Seal] /s/ CLAUDE L. ROWE,
Notary Public in and for said County and State.
My Commission expires Dec. 11, 1953. [1095]

[Endorsed]: Filed January 8, 1952.

[Title of District Court and Cause.]

COMPLAINT IN INTERVENTION

(By The City of Fresno)

Comes now the complainant in intervention, the City of Fresno, a municipal corporation, and complains of defendants and for cause of action in intervention alleges as follows:

I.

That defendant Richard Boke is the duly appointed, qualified and acting California Regional Director of the Bureau of Reclamation of the United States of America and is in full and complete charge, management and control of the Central Valley Project of the United States Bureau of Reclamation, including Friant Dam, the Friant-Madera Canal and the Friant-Kern Canal; that defendant Martin Blote is the duly appointed, qualified and acting California Regional Water Master of the Bureau of Reclamation of the United States of America; that defendant Jack Rodner is the duly appointed, qualified and acting District Manager of the Bureau of Reclamation of the United States of America for the area including [1066] said Friant Dam, said Friant-Madera Canal and the said Friant-Kern Canal of said Central Valley Project of said United States of America; that the defendants Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District, Delano-Earlimart Irrigation District, Lindsay-

Strathmore Irrigation District, Lindmore Irrigation District, Ivanhoe Irrigation District, Saucelito Irrigation District, Orange Cove Irrigation District, Tulare Irrigation District, Lower Tule River Irrigation District, Stone Corral Irrigation District, Chowchilla Water District, Madera Irrigation District and Southern San Joaquin Municipal Utility District, heretofore and in the original complaint on file herein, sued as John Doe One to Two Hundred, public corporations, are public corporations duly formed, organized and existing under and by virtue of the laws of the State of California; that defendant directors John Doe One to Two Hundred are the duly appointed, qualified and acting directors of those certain defendant public corporations hereinbefore named.

II.

That complainant in intervention, the City of Fresno, hereinafter referred to as City of Fresno, is a municipal corporation organized and existing under and by virtue of the laws of the State of California, with a population of approximately one hundred thousand (100,000) inhabitants, and is located in Fresno County, California, within the watershed of the San Joaquin River, wherein the waters of said San Joaquin River originate, with boundaries as shown on Exhibit "A", annexed hereto and expressly made a part hereof, and which boundaries of said City of Fresno are also located in an area immediately adjacent to said San Joaquin River, which area (including said lands within the

boundaries of said City of Fresno) can be conveniently supplied with water from said San Joaquin River, and said City of Fresno and its inhabitants conveniently supplied with water for municipal and domestic purposes from said San Joaquin River; that the water requirements of said area, including the area within the boundaries of said City of Fresno, cannot be satisfied [1067] to the same extent if the hereinafter mentioned illegal and unlawful storage and diversions and the threatened and illegal and unlawful storage and transportation of waters of the San Joaquin River at Friant Dam by defendants and the threatened and illegal exchanges of water of said San Joaquin River by said defendants, hereinafter mentioned, are commenced, permitted or allowed; that said City of Fresno now has approximately forty (40) water wells and pumps located within the boundaries of said City of Fresno, as shown on Exhibit "A" hereof, and presently pumping from the underground water stratas, percolating waters and subterranean streams underlying said City of Fresno; that a large part of the said wells and pumps are located over the alluvial cone of the San Joaquin River within the boundaries of the City of Fresno and are pumping waters for municipal and domestic purposes from said alluvial cone of said San Joaquin River from underground and percolating waters, water stratas and subterranean streams supplied, replenished and supported normally and in the course of nature by the waters of said San Joaquin River (although at times said supply is supple-

mented with and substituted with foreign waters seeping from unlined irrigation canals running through and near the boundaries of said City of Fresno); that the City of Fresno, through its duly elected officers, is informed and believes, and upon such information and belief alleges that the balance of said forty (40) water wells and pumps of said City of Fresno hereinabove referred to so pumping water for municipal and domestic uses of said City of Fresno and its inhabitants and are pumping water from underground percolating waters, water stratas and subterranean streams supported, in part, and supplied, in part, and which, in the immediate future will be wholly supplied, by the waters of the said San Joaquin River, which ordinarily, and, in the course of nature, flow, and, except for the illegal and unlawful acts and threatened illegal and unlawful acts of defendants hereinafter referred to would flow, down the channel of said San Joaquin River and percolate and flow into the water stratas, percolating waters and subterranean streams within the alluvial cone of said San Joaquin River and thence into [1068] the other adjacent water stratas and subterranean streams underlying said City of Fresno; that the full flow of said San Joaquin River down the natural channel of the San Joaquin River, unrestricted by any of the hereinafter mentioned illegal and unlawful storage and diversions and threatened and illegal and unlawful storage, diversions or transportation of the waters of said San Joaquin River by said defendants, is necessary to presently support, and, in the future, to supplement

and supply the percolating waters and subterranean streams and water stratas of said alluvial cone of the said San Joaquin River located within the boundaries of the said City of Fresno; that City of Fresno is informed and believes, and upon such information and belief alleges that the entire natural flow of the San Joaquin River down the natural channel of said San Joaquin River is needed and necessary to support, and, in the future, supply the water stratas, percolating waters and subterranean streams lying outside of the alluvial cone of the said San Joaquin River, but within said boundaries of the City of Fresno and immediately adjacent to said alluvial cone of said San Joaquin River; that if said defendants are allowed to continue their illegal storage and diversions hereinafter referred to or to carry out their hereinafter threats of illegally and unlawfully storing and diverting and transporting the waters of said San Joaquin River at Friant Dam, as hereinafter alleged, or if the plan of physical solution of the State of California, dated December 15, 1951, or the plan of physical solution of the defendant employees and agents of the United States Bureau of Reclamation, dated December 15, 1951, heretofore filed in the above entitled action (reference to both of which plans is hereby expressly made and which said plans are hereby incorporated as a part of this complaint in intervention) are allowed to be carried out or placed in operation by said defendants or said State of California, the water level of said wells of the City

of Fresno, located over the alluvial cone of the San Joaquin River and within the boundaries of said City of Fresno, will fail, dry up and disappear, and that the City of Fresno is informed and believes, and upon such information and belief alleges that the balance of said forty (40) wells of said [1069] City of Fresno will also eventually dry up in such case; that said City of Fresno will, in such events, not be able to pump sufficient water from said wells for its municipal purposes, nor will it have sufficient, nor will it be able to obtain sufficient, water for the domestic uses of its inhabitants—all of which, if allowed, will irreparably injure and damage the said City of Fresno and will irreparably injure and damage the health and the property of the inhabitants thereof; that City of Fresno is without an adequate remedy at law in the premises; that the adoption and enforcement by the above entitled court of the physical solution, proposed and as set forth in the report of the original plaintiffs in the above entitled action and prepared by Charles H. Lee, dated December 15, 1951 (which said plan of the said Charles H. Lee is expressly referred to and incorporated as a part of this said complaint), will maintain, supply and support the underground and percolating waters, water stratas and subterranean streams underlying the lands within the boundaries of said City of Fresno in the same manner as if the natural flow of the San Joaquin River were allowed to presently and in the future continue.

III.

That defendants Richard Boke, purporting to act as Regional Director of the Bureau of Reclamation of the United States of America, Martin Blote, purporting to act as Regional Water Master of the Bureau of Reclamation of the United States of America, Jack Rodner, purporting to act as District Manager of the Bureau of Reclamation of the United States of America, are now engaged illegally, unlawfully without right and acting in excess of the authority of their respective offices and employment and in excess of their authority conferred upon them by the Constitution and Laws of the United States of America and the State of California, hereinafter more specifically referred to, in maintaining a dam across said San Joaquin River near Friant, California, known as Friant Dam, which said dam is known as Friant Dam of the Central Valley's Project of said United States Bureau of Reclamation, and consists of certain [1070] concrete abutments, levies, drum gates and diversion works, together with concrete canals known as the Friant-Kern Canal and the Madera Canal, and other diversion works by means of which said defendants in this said paragraph herein above mentioned now are and threaten to, intend to and will, unless restrained by order of the above entitled court, illegally, unlawfully, without right and in excess of their authority, as aforesaid, impound and store the waters of said San Joaquin River solely for agricultural and irrigation use from one season to another and from wet to dry seasons

and from dry to wet seasons and make other cyclic storage and threaten to, intend to and will, unless restrained by order of the above entitled court, illegally and unlawfully divert practically the entire flow of said San Joaquin River solely for agricultural and irrigation use from points on said River at said Friant Dam and illegally, unlawfully and without authority, as aforesaid, transport practically all of the waters which in the course of nature flow down said San Joaquin River from the natural channel and River Bed of said San Joaquin River, all of which waters are now needed and which will be required for reasonable prospective recognized uses in and under said lands of plaintiff, for the uses here and in the Second Cause of Action of this complaint in intervention enumerated, to lands which are not riparian to said San Joaquin River out of said County of Fresno and out of the watershed of said San Joaquin River, not adjacent to said San Joaquin River, and which have no appropriative, prescriptive or other rights in or to any of the waters of said River, and the owners of which lands have no riparian, appropriative, prescriptive, overlying, percolating or other rights to the waters of said San Joaquin River; that all of said illegal and unlawful impounding, storage, diversions and transportation of said waters of said San Joaquin River in this paragraph mentioned by said defendants have irreparably, and will continue to irreparably, injure the City of Fresno and the health of its inhabitants and will deprive the City of Fresno of a municipal water supply and the inhabi-

tants of the City of Fresno with a domestic water supply, the use of which is the highest priority water use according [1071] to the laws of the State of California and of the United States of America and will injure and destroy the health of the inhabitants of City of Fresno and will irreparably injure and damage the property of the inhabitants of City of Fresno and cause the City of Fresno and its inhabitants irreparable loss and damage, unless restrained by order of the above entitled court; that plaintiff has no adequate remedy at law; that representation of City of Fresno by existing parties may be inadequate.

IV.

That City of Fresno has demanded that defendants cease said illegal and unlawful impounding, storage and other acts and said threatened illegal and unlawful diversions, transportation and uses hereinabove and in this complaint more specifically enumerated, but that defendants, and each of them, have ignored said demands and have refused to perform or carry out said demands and continue in their beforementioned and hereinafter mentioned illegal and unlawful storage and diversions of the waters of said San Joaquin River and their said illegal and unlawful acts and conduct and threatened additional illegal and unlawful diversions of the waters of said San Joaquin River at Friant Dam and will commence and continue said illegal and unlawful acts, storage and diversion unless restrained by order of the above entitled court.

V.

That said illegal and unlawful impounding and storage of water in said Friant Dam and said illegal and unlawful diversions and said threatened illegal and unlawful diversions, transportation and uses of said water of the San Joaquin River by defendants, as aforesaid, are and will be wholly without right and illegal and unlawful and in excess of the authority of said defendants and in excess of the authority conferred upon defendants by those certain Acts of Congress known as "The Basic Reclamation Act of June 17, 1902", as amended (43 U.S.C., Sec. 391, 411, as amended); Act of August 30, 1935, (49 Stat. 1028, 1038); the Act of June 22, 1936 (49 Stat. 1597, 1622); the Act of August 9, 1937 (50 Stat. 564, 592, 597); the Act of August 26, 1937 (50 Stat. 844, 850); the Act of March 2, 1938 (52 Stat. 83); the Act of May 9, 1938 (52 Stat. 291, 318, 319 and 324); Joint Resolution of June 21, 1938 (52 Stat. 809, 811 and 816); Act of May 10, 1939 (53 Stat. 685, 714 and 719); Act of August 4, 1939 (53 Stat. 1187, 1192, 1194 and 1197); Act of April 6, 1940 (54 Stat. 82, 87); Act of June 18, 1940 (54 Stat. 406, 432, 433, 437, 438); Act of October 17, 1940 (54 Stat. 1198, 1199); Act of June 28, 1941 (55 Stat. 303, 331 and 336); Act of [1072] July 30, 1941 (55 Stat. 810, 826); Act of July 8, 1942 (56 Stat. 650); Act of July 12, 1943 (57 Stat. 451, 472, 476); Act of June 28, 1944 (58 Stat. 463, 486, 487); Act of December 22, 1944 (58 Stat. 887, 888, 889, 890, 891 and 901); Act of July 25, 1947 (61 Stat. 460, 475) and Amendments to said foregoing

Acts; the Constitution and other Laws and Statutes of the United States of America, or Section 3, Article XIV of the Constitution of California, the Water Code of California and particularly Sections 1201, 1254, 1460, 1463, 1701, 1706, 103, 6,029, 11,460, 11,461, 11,463 of said Water Code, and other Laws and Statutes of the State of California; that said threatened and intended illegal impounding storage, diversions, transportation and uses by said defendants of said waters of said San Joaquin River, as aforesaid, will cause the City of Fresno and its inhabitants great and irreparable loss, injury and damage, all as aforesaid.

That the waters of the San Joaquin River which said defendants thus intend to impound, store, divert, transport and use, as aforesaid, with the exception of a small amount of the said waters of said River intended to be diverted to defendant, Madera Irrigation District, a public corporation, as aforesaid, will be taken entirely outside of and away from the Fresno County watershed of the said San Joaquin River, where the waters of said San Joaquin River originate, and lands adjacent thereto, and will be forever lost to said City of Fresno, to Fresno County and to lands adjacent to said San Joaquin River and to said watershed of said San Joaquin River, with no means of returning thereto; that the capacity of said Friant Dam and said defendants' canals and other works of diversions are and will be such that practically all of the entire flow of said San Joaquin River can be thus impounded, stored, diverted, transported and taken away from

and used outside of the San Joaquin River watershed, Fresno County and from lands adjacent thereto, which can be conveniently served with water from said San Joaquin River, and prevented from flowing in, under and through lands within the boundaries of City of Fresno, or into said hereinbefore mentioned underground and percolating waters, water stratas and subterranean streams underlying the lands within the boundaries of the City of Fresno, as aforesaid (or from being legally appropriated and diverted [1073] to lands within the boundaries of the City of Fresno and the legal use of its inhabitants as set forth in the Second Cause of Action hereof, reference to which is expressly herein made).

That the impounding, storage, transportation, diversions and uses of said waters by defendants, as aforesaid, will deprive the City of Fresno and its inhabitants of large quantities of water needed by them for drinking water and for municipal uses and other uses, and for domestic uses and for domestic irrigation of their lands; that such illegal and unlawful impounding, storage, diversions, transportation and uses of said waters of said San Joaquin River and threatened illegal and unlawful diversions by defendants will cause the flow of the San Joaquin River below said Friant Dam to practically disappear; that said unlawful and illegal impounding, storage, diversions, transportation and uses of the waters of said San Joaquin River by defendants and threatened illegal diversions, with their consequent practical stoppage of the flow of

said San Joaquin River below Friant Dam, will eventually destroy the City of Fresno's supply of underground and percolating waters, said subterranean streams and said water stratas now and hereafter needed by the City of Fresno and its inhabitants; that by reason thereof the City of Fresno and its inhabitants will be deprived of their property, without due process of law, and their property taken for public use, without just compensation, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States of America, and Section 14, of Article I, of the Constitution of the State of California; that at no time have the lands, waters, water rights, or other priority of the City of Fresno and its inhabitants herein mentioned been condemned or taken by legal process, nor can they legally be so taken or condemned, nor have the same been sold or assigned to defendants, nor has legal compensation ever been received by the City of Fresno, or its inhabitants, nor offered by defendants therefor; that the City of Fresno and its inhabitants have no adequate remedy at law in the premises.

VI.

That the San Joaquin River is, and was at all times herein mentioned, a natural stream and water course, with well defined bed [1074] and banks, rising and having its source in the Sierra Nevada Mountains of California, and does, and at all times herein mentioned did, flow in its course toward the sea in a general Westerly direction to Mendota

Dam across said San Joaquin River, in the vicinity of Mendota, California, and thence Northwesterly through Fresno, Madera, Merced, Stanislaus, San Joaquin and Contra Costa Counties of California, to its mouth in San Francisco Bay in California, and thence and through said Bay to the Pacific Ocean.

For A Further, Separate and Second Cause of Action In Intervention, the City of Fresno, a municipal corporation, alleges as follows:

I.

Realleges all of paragraphs I to VI, inclusive, of the First Cause of Action of this Complaint in Intervention, herein contained, the same as if the same were fully set forth herein.

II.

That the City of Fresno is located in an area adjacent to said San Joaquin River and which can be conveniently supplied with water therefrom, all as aforesaid, roughly which said area in which said City of Fresno is located, is commonly referred to as The Fresno Irrigation District; that during the last fifteen (15) years there have been large increases in the number of pumps pumping from the underground water stratas, percolating waters and underground streams underlying said Fresno Irrigation District and said City of Fresno, and that the said City of Fresno is informed and believes, and upon such information and belief alleges that

the underground and percolating waters and underground streams and underground storage underlying said Fresno Irrigation District and said City of Fresno are being overpumped approximately 250,000 acre-feet a year; that there is and will be no material increases in the surface water nor underground water for said area known as said Fresno Irrigation District, including said City of Fresno, except from said San Joaquin River, and that said overpumping, together with the increased pumping [1075] of the City of Fresno, due to a rapid increase in population of said City of Fresno and increased water needs of said Fresno Irrigation District has rapidly lowered the water level of the wells in said City of Fresno so that even with the plan of physical solution, hereinbefore and in this case submitted by the original plaintiffs herein, the water level in the percolating water, water stratas and subterranean streams underlying said City of Fresno will decrease and eventually become insufficient, and it is necessary that said City of Fresno obtain additional surface water replenishment from the San Joaquin River at a diversion point to be located near Friant Dam, or said City of Fresno will shortly be without sufficient water for its municipal uses and without sufficient water to supply its inhabitants with water for domestic use; that if said additional surface water from said San Joaquin River is not immediately obtained or allowed to be illegally stored and diverted from said San Joaquin River by said defendants, as hereinbefore alleged, the inhabitants of said City of Fresno will be without

drinking water, the health of the inhabitants of said City of Fresno will be irreparably injured and impaired and the inhabitants of said City of Fresno will suffer irreparable damage and loss to their property and businesses; that on or about the 20th day of August, 1930, the City of Fresno, by Application No. 6772, filed with the State of California, Department of Public Works, Division of Water Resources, an application for a Permit to appropriate and store 150,000 acre-feet of water per annum at a point near Friant Dam and for the diversion of said 150,000 acre-feet of water per annum to intervening plaintiff, City of Fresno, for municipal uses and to serve its inhabitants with a domestic water supply; that on the 20th day of August, 1930, the City of Fresno, by Application No. 6771, filed with the State of California, Department of Public Works, Division of Water Resources, an application for a Permit to appropriate 25,000 acre-feet per annum to store the same near said Friant Dam and for the diversion from said San Joaquin River to the City of Fresno for domestic irrigation purposes in said City of Fresno; that on the 5th day of December, 1931, by [1076] Application No. 7134, the City of Fresno filed an application for appropriation of 200 cubic feet per second of direct diversion from said San Joaquin River at Friant Dam for municipal and domestic uses in said City of Fresno; that on said 5th day of December, 1931, the City of Fresno, by Application No. 7135, filed an application for appropriation of 40 cubic feet per second of direct diversion from

the San Joaquin River at Friant Dam for domestic irrigation uses within the City of Fresno; that all of said water covered by said Application Nos. 6772, 6771, 7134 and 7135 is needed for the present and future needs of said City of Fresno and its inhabitants and said City of Fresno has no other convenient source of surface and underground water supply for said City of Fresno and its inhabitants except from said San Joaquin River that on or about the 30th day of July, 1927, the Department of Finance of the State of California filed Application No. 5637 for the development of power at Friant Dam and Application No. 5638 for storage and diversion of water from the San Joaquin River at Friant Dam for irrigation, domestic and flood control purposes and did on the 2d day of August, 1938, file Application No. 9369 for an appropriation for irrigation, domestic and flood control purposes, all of which said Applications Nos. 5637, 5638 and 9369 were on the 30th day of August, 1939, purportedly assigned to the United States of America (Bureau of Reclamation), but that said aforementioned Applications for appropriations of waters of said San Joaquin River by said City of Fresno are prior and of higher priority than said applications filed by said Department of Finance of the State of California and must be satisfied before said Applications so purportedly filed and assigned, as hereinabove alleged, viz: Applications Nos. 5637, 5638 and 9369, and said applications of said City of Fresno have been publicly acknowledged by

said State of California, Department of Public Works, Division of Water Resources, as of higher priority than said Applications Nos. 5637, 5638 and 9369 so filed and assigned by said Department of Finance of the State of California to said United States of America (Bureau of Reclamation), which said acknowledgment [1077] reads as follows:

> "Applications 5637 and 5638 of the United States of America are prior in time to the applications of the City; however, attention is directed to Section 1460 of the State Water Code which provides as follows:
>
> 'The application for a permit by a municipality for the use of water for the municipality or the inhabitants thereof for domestic purposes shall be considered first in right, irrespective of whether it is first in time'.";

that said Applications Nos. 6771, 6772, 7134 and 7135, hereinabove mentioned of said City of Fresno, are in good standing; that the same have been advertised legally by the State of California, Department of Public Works, Diyision of Water Resources, have been protested and that a public hearing in accordance with law will shortly be held and that City of Fresno is legally entitled to the granting of its Applications Nos. 6771, 6772, 7134 and 7135, as the first and highest priority for the waters of said San Joaquin River covered by said Applications Nos. 6771, 6772, 7134 and 7135 for storage and diversion at Friant Dam for municipal and domestic uses in said City of Fresno; that said Ap-

plications Nos. 5637, 5638 and 9369 so filed by the Department of Finance of the State of California and so purportedly assigned to said United States of America (Bureau of Reclamation) are entirely void and of no effect for the reason that they do not conform to the requirements of the laws and the statutes of the State of California at the time they were filed, relating to water filing applications, nor to any law or statute of the State of California or of the United States of America subsequent thereto, and that the hereinbefore mentioned threatened illegal storage and diversions by defendants at Friant Dam are entirely illegal, unlawful and without merit for the reason that said defendants, or either or any of them, have never proceeded with their said application and had never been granted a Permit or the right to appropriate any of the waters of said San Joaquin River; that said Applications Nos. 5637, 5638 and 9369 lost any priority they had, if any, on December 31, 1947, and that said Applications are null and void and of no effect, [1078] and that all of said storage and/or diversions and threatened diversions by said defendants is unlawful, illegal and without color or right, title or interest; that in lieu of building its own dam and diversion works, City of Fresno has heretofore offered, among other things, to pay to the United States Bureau of Reclamation and the defendants, agents and officials thereof herein named, a reasonable pro rata portion of the total cost of said Friant Dam operated by said defendants, as aforesaid, for the purpose of storage and

diversions of said surface waters covered by said heretofore mentioned Applications of said City of Fresno, filed with said State of California, Department of Public Works, Division of Water Resources, as aforesaid, and will pay the same in event the physical solution herein suggested is adopted by the court, but that such offer has been refused by said defendants, agents and officials of said United States Bureau of Reclamation; that either the diversion of the surface waters to the City of Fresno at or near Friant Dam covered by the Applications of the City of Fresno and heretofore referred to, together with a full natural flow of said San Joaquin River after said diversions or storage and said diversions covered by said Applications of said City of Fresno heretofore referred to, together with the adoption of the plan dated December 15, 1951, and prepared by Charles H. Lee, are necessary for the present and future water supply for municipal and domestic purposes of said City of Fresno, is necessary.

That based on a normal and customary past increase in growth, population, area and business in the City of Fresno, the City of Fresno will by the year 2,000 need six (6) times the amount of water for its municipal purposes and for the domestic uses of its inhabitants than it is presently using; that the adoption of putting into effect of either the plan for physical solution of the United States Bureau of Reclamation or of the plan for physical solution of the State of California, both dated the said 15th

day of December, 1951, or the continuation of the illegal storage and diversions of the waters of the San Joaquin River by defendants or the carrying out of said defendants' threatened, illegal and unlawful storage and diversions [1079] of the waters of the San Joaquin River, as hereinbefore alleged, will deprive the City of Fresno of its municipal water supply and its inhabitants of their domestic water supply and will irreparably damage and injure the said City of Fresno and the health and property of its inhabitants, both now and in the future; that the City of Fresno intends to proceed, and will proceed, with the perfection and completion of its applications hereinbefore mentioned and the construction of all necessary works to carry out the plans contained and set forth in said applications of said City of Fresno, to wit: Nos. 6771, 6772, 7134, and 7135, with all due diligence and is willing to pay its reasonable proportionate share of said Friant Dam and Dam Site and any other legal costs for the use of the same for storing and diverting the waters of said San Joaquin River, covered by its said Applications Nos. 6771, 6772, 7134 and 7135.

That either under natural conditions or under the said plan of physical solution of the said Charles H. Lee, dated the said 15th day of December, 1951, there is and will be sufficient surplus water in the San Joaquin River sufficient to cover the amount of water applied for by said City of Fresno in its said Applications Nos. 6771, 6772, 7134 and 7135.

Wherefore, intervening complainant City of Fresno prays judgment against defendants as follows:

1. That defendants be forever enjoined from impounding and storing of the San Joaquin River waters behind Friant Dam and from making seasonal or cyclic storage of said waters behind Friant Dam and cyclic releases of said waters from said Friant Dam.

2. That defendants be forever enjoined from diverting and transporting said waters of said San Joaquin River away to lands not riparian to said San Joaquin River, to lands, the owners [1080] of which have no riparian, prescriptive, appropriative or other rights to the waters of said San Joaquin River and to lands lying without the watershed of said San Joaquin River and from selling or entering into contracts for the sale of the waters of said San Joaquin River.

3. That in event the above entitled court refuses the first two (2) prayers hereinabove set forth, and only in such event, then, in lieu thereof, that the above entitled court make a physical solution of rights and claims of City of Fresno and other parties hereto in and to the waters of said San Joaquin River as the term "physical solution" is used in the decisions of the Supreme Court of California.

4. For such other and further relief as may seem meet and equitable in the premises.

Dated: January 3, 1952.

/s/ CHRISTIAN M. OZIAS,
City Attorney of the City of Fresno,
State of California.

/s/ CLAUDE L. ROWE,
Special Attorney for the City of
Fresno, State of California. [1081]

Duly Verified. [1082]

[Endorsed]: Filed January 4, 1952.

[Title of District Court and Cause.]

COMPLAINT IN INTERVENTION

(By Tranquillity Irrigation District)

Come now the complainants in intervention, and complaining of defendants and for cause of action in intervention allege as follows:

I.

That defendant Richard Boke, is and was at all times herein mentioned, the duly appointed, qualified and acting California Regional Director of the Bureau of Reclamation of the United States of America and is in full and complete charge, management and control of the Central Valley Project of the United States Bureau of Reclamation, including Friant Dam, the Friant-Madera Canal and the Friant-Kern Canal; that defendant Martin Blote is and was at all times herein mentioned the duly appointed, qualified and acting California Regional Water Master of the Bureau of Reclamation of the United States of [1118] America; that defendant Jack Rodner is and was at all times herein mentioned the duly appointed, qualified and acting District Manager of the Bureau of Reclamation of the United States of America for the area including said Friant Dam, said Friant-Madera Canal and the said Friant-Kern Canal of said Central Valley Project of said United States Bureau of Reclamation; that the defendants Terra Bella Irrigation District, Porterville Irrigation Dis-

trict, Exeter Irrigation District, Delano-Earlimart Irrigation District, Lindsay-Strathmore Irrigation District, Lindmore Irrigation District, Ivanhoe Irrigation District, Saucelito Irrigation District, Orange Cove Irrigation District, Tulare Irrigation District, Lower Tule River Irrigation District, Stone Corral Irrigation District, Chowchilla Water District, Madera Irrigation District and Southern San Joaquin Municipal Utility District, heretofore and in the original complaint on file herein sued as John Doe One to Two Hundred, are public corporations duly formed, organized and existing under and by virtue of the laws of the State of California; that defendant directors John Doe One to Two Hundred are the duly appointed, qualified and acting directors of those certain defendant public corporations hereinbefore named.

II.

That complainant in intervention, the Tranquillity Irrigation District, hereinafter referred to as Tranquillity Irrigation District, is and for more than thirty (30) years last past has been, a public corporation formed, organized and existing under and by virtue of the laws of the State of California, and is and has been at all times herein mentioned, located in Fresno County, California, within the watershed of the San Joaquin River, wherein the waters of said San Joaquin River originate, with boundaries as shown on Exhibit "A", annexed hereto and expressly made a part hereof and which boundaries of said Tranquillity Irrigation District are

and have been at all times herein mentioned also located in an area immediately adjacent to said San Joaquin River, which area (including said lands within [1119] the boundaries of said Tranquillity Irrigation District) can be conveniently supplied with water from said San Joaquin River, and its inhabitants and landowners supplied with water for irrigation and domestic purposes from said San Joaquin River; that the water requirements of said area, including the area within the boundaries of said Tranquillity Irrigation District, cannot be satisfied to the same extent if the hereinafter mentioned illegal and unlawful storage and diversion and the threatened and illegal and unlawful storage, diversions and transportation of waters of the San Joaquin River at Friant Dam by defendants and the threatened and illegal exchanges of water of said San Joaquin River by said defendants, hereinafter mentioned, are commenced, permitted or allowed; that all of the lands within the boundaries of said Tranquillity Irrigation District, except the small piece of land used for a water storage reservoir by said Tranquillity Irrigation District, all as shown on Exhibit "A" hereof, are riparian to said San Joaquin River and Fresno Slough; that said Tranquillity Irrigation District now has approximately eleven (11) water wells and pumps located within the boundaries of said Tranquillity Irrigation District, as shown on Exhibit "A" hereof, which pump water for the lands, landowners and inhabitants within said Tranquillity Irrigation District for the purpose of growing cotton, vegetables,

alfalfa, rice, and other agricultural products which for more than thirty (30) years last past have been and now are pumping from the underground water stratas, percolating waters and subterranean streams underlying said Tranquillity Irrigation District; that there are also numerous domestic wells and pumps of inhabitants and landowners within the boundaries of said Tranquillity Irrigation District which for more than thirty (30) years last past have been and now are pumping water for domestic purposes and uses within said Tranquillity Irrigation District from water stratas, percolating waters and subterranean streams underlying the lands within the boundaries of said Tranquillity Irrigation District; that the underground and percolating waters, [1120] water stratas and subterranean streams from which said pumps and wells of said Tranquillity Irrigation District and said domestic water wells and pumps of said inhabitants and landowners of said Tranquillity Irrigation District are now pumping are supplied, replenished and supported normally and in the course of nature by the waters of said San Joaquin River (although at times said underground and percolating waters are supplemented with and substituted with foreign waters seeping into and from Fresno Slough, a slough running near the boundaries of said Tranquillity Irrigation District; that the full flow of said San Joaquin River down the natural channel of the San Joaquin River, unrestricted by any of the hereinafter mentioned illegal and unlawful storage and diversions and threatened and illegal and

unlawful storage, diversions or transportation of the waters of said San Joaquin River by said defendants is necessary to presently and in the future support and supply said percolating waters and subterranean streams and water stratas within the boundaries of said Tranquillity Irrigation District and which are fed, supported and supplied by the said San Joaquin River, as aforesaid; that if said defendants are allowed to continue their illegal storage and diversions hereinafter referred to or to carry out their hereinafter threats of illegally and unlawfully storing and diverting and transporting the waters of said San Joaquin River at Friant Dam, as hereinafter alleged, or if the plan of physical solution of the State of California, dated December 15, 1951, or the plan of physical solution of the defendant employees and agents of the United States Bureau of Reclamation, dated December 15, 1951, heretofore filed in the above entitled action (reference to both of which plans is hereby expressly made and which said plans are hereby incorporated as a part of this complaint in intervention) are allowed to be carried out or placed in operation by said defendants, the water level of said wells of the Tranquillity Irrigation District and of the domestic wells of its landowners within the boundaries of said Tranquillity [4121] Irrigation District, will fail, dry up and disappear; that said Tranquillity Irrigation District and its inhabitants and landowners will, in such events, not be able to pump sufficient water from said wells for its agricultural and their domestic purposes, all of which, if allowed, will ir-

reparably injure and damage the said Tranquillity Irrigation District and will irreparably injure and damage the health and property of the inhabitants thereof; that Tranquillity Irrigation District is without adequate remedy at law in the premises; that the adoption and enforcement by the above entitled court of the physical solution, proposed and as set forth in the report of the original plaintiffs in the above entitled action and prepared by Charles H. Lee, dated December 15, 1951, and filed herein, together with one additional dam across said San Joaquin River between Gravelly Ford and Mendota Pool referred to in the Charles H. Lee report (which said plan of the said Charles H. Lee is expressly referred to and incorporated as a part of this said complaint), will greatly help to maintain, supply and support the underground and percolating waters, water stratas and subterranean streams underlying the lands within the boundaries of said Tranquillity Irrigation District.

III.

That defendants Richard Boke, purporting to act as Regional Director of the Bureau of Reclamation of the United States of America, Martin Blote, purporting to act as Regional Water Master of the Bureau of Reclamation of the United States of America, Jack Rodner, purporting to act as District Manager of the Bureau of Reclamation of the United States of America, are now engaged illegally, unlawfully without right and acting in excess of the authority of their respective offices and employ-

ment and in excess of their authority conferred upon them by the Constitution and laws of the United States of America and the State of California, hereinafter more specifically referred to, [1122] in maintaining a dam across said San Joaquin River near Friant, California, known as Friant Dam, which said dam is known as Friant Dam of the Central Valley's Project of said United States Bureau of Reclamation, and consists of certain concrete abutments, levies, drum gates and diversion works, together with concrete canals known as the Friant-Kern Canal and the Madera Canal, and other diversion works by means of which said defendants in this said paragraph hereinabove mentioned now are and threaten to, intend to and will, unless restrained by order of the above entitled court, illegally and unlawfully, without right and in excess of their authority, as aforesaid, impound and store the waters of said San Joaquin River from one season to another and from wet to dry seasons and make other cyclic storage and threaten to, intend to and will, unless restrained by order of the above entitled court, illegally and unlawfully divert practically the entire flow of said San Joaquin River solely for irrigation uses by said before mentioned irrigation, water and municipal utility districts from points on said River at said Friant Dam and illegally, unlawfully and without authority, as aforesaid, transport practically all of the waters which in the course of nature flow down said San Joaquin River from the natural channel and river bed of said San Joaquin River, all of which waters

are now needed and which will be required for reasonable prospective recognized uses in and under said lands of Tranquillity Irrigation District for the uses herein and in the Second Cause of Action of this complaint in intervention enumerated to lands which are not riparian to said San Joaquin River, to lands which lie outside of said County of Fresno and outside of the watershed of said San Joaquin River, and to lands not adjacent to said San Joaquin River, and which lands have no appropriative, prescriptive or other rights in or to any of the waters of said River, and the owners of which lands have no riparian, appropriative, prescriptive, overlying, percolating or other rights to the waters of said San Joaquin River; that all of said illegal and unlawful impounding, storage, diversions and transportation of said waters of said San Joaquin River in this [1123] paragraph mentioned by said defendants have and will entirely deprive Tranquillity Irrigation District of water for its aforementioned pumps and wells and will irreparably, and will continue to irreparably, injure Tranquillity Irrigation District and the health of its inhabitants and landowners and will deprive Tranquillity Irrigation District of agricultural irrigation water supply and the owners of lands within the boundaries of Tranquillity Irrigation District and its inhabitants of a domestic water supply, and will injure and destroy the crops now growing and in the future to be grown on the lands within the boundaries of said Tranquillity Irrigation District, the health of the inhabitants of Tranquillity Irriga-

tion District, and will irreparably injure and damage Tranquillity Irrigation District and the property of the landowners and inhabitants of Tranquillity Irrigation District and cause Tranquillity Irrigation District and its landowners and inhabitants irreparable loss and damage, unless restrained by order of the above entitled court, and that Tranquillity Irrigation District has no adequate remedy at law in the premises, all as aforesaid.

IV.

That Tranquillity Irrigation District and other complainants in intervention have demanded that defendants cease said illegal and unlawful impounding, storage and other acts and said threatened illegal and unlawful diversions, transportation and uses hereinabove and in this complaint more specifically enumerated, but that defendants, and each of them, have ignored said demands and have refused to perform or carry out said demands and continue in their beforementioned and hereinafter mentioned illegal and unlawful storage and diversions of the waters of said San Joaquin River and their said illegal and unlawful acts and conduct and threatened additional illegal and unlawful diversions of the waters of said San Joaquin River at Friant Dam and will commence and continue said illegal and unlawful acts, storage and diversions unless restrained by order of the above entitled court.

V.

That said illegal and unlawful impounding and storage of water in said Friant Dam and said ille-

gal and unlawful diversions and said threatened illegal and unlawful diversions, transportation and uses of said water of the San Joaquin River by defendants, as aforesaid, are and will be wholly without right and illegal and unlawful and in excess of the authority of said defendants and in excess of the authority conferred upon defendants by those certain Acts of Congress known as "The Basic Reclamation Act of June 17, 1902", as amended (43 U.S.C., Sec. 391, 411, as amended); Act of August 30, 1935 (49 Stat. 1028, 1038); the Act of June 22, 1936 (49 Stat. 1597, 1622); the Act of August 9, 1937 (50 Stat. 564, 592, 597); the Act of August 26, 1937 (50 Stat. 844, 850); the Act of March 2, 1938 (52 Stat. 83); the Act of May 9, 1938 (52 Stat. 291, 318, 319 and 324); Joint Resolution of June 21, 1938 (52 Stat. 809, 811 and 816); Act of May 10, 1939 (53 Stat. 685, 714 and 719); Act of August 4, 1939 (53 Stat. 1187, 1192, 1194 and 1197); Act of April 6, 1940 (54 Stat. 82, 87); Act of June 18, 1940 (54 Stat. 406, 432, 433, 437, 438); Act of October 17, 1940 (54 Stat. 1198, 1199); Act of June 28, 1941 (55 Stat. 303, 331 and 336); Act of July 30, 1941 (55 Stat. 810, 826); Act of July 8, 1942 (56 Stat. 650); Act of July 12, 1943 (57 Stat. 451, 472, 476); Act of June 28, 1944 (58 Stat. 463, 486, 487); Act of December 22, 1944 (58 Stat. 887, 888, 889, 890, 891 and 901); Act of July 25, 1947 (61 Stat. 460, 475) and Amendments to said foregoing Acts, and the Constitution and other laws and Statutes of the United States of America, or Section 3, Article XIV of the Constitution of California, the

Water Code of California and particularly Sections 1201, 1254, 1460, 1463, 1701, 1706, 103, 6,029, 11,460, 11,461, 11,463 of said Water Code, other laws and Statutes of the State of California and other sections of the Constitution of the State of California.

VI.

That the San Joaquin River is and was at all times herein [1125] mentioned a natural stream and water course, with well defined bed and banks, rising and having its source in the Sierra Nevada Mountains of California, and does, and at all times herein mentioned did, flow in its course toward the sea in a general Westerly direction to Mendota Dam across said San Joaquin River, in the vicinity of Mendota, California, and thence Northwesterly through Fresno, Madera, Merced, Stanislaus, San Joaquin and Contra Costa Counties of California, to its mouth in San Francisco Bay in California, and thence and through said Bay to the Pacific Ocean.

VII.

That Fresno Slough is a part, inlet and arm of the said San Joaquin River opening into and connecting with said San Joaquin River near and upstream from Mendota Dam on said San Joaquin River, which said slough is located in Fresno County, California, and the waters of which said slough flow both to and from said San Joaquin River, but which said slough is, and at all times herein mentioned has been, practically entirely supplied with water flowing naturally from said San

Joaquin River into said Fresno Slough and past lands of Tranquillity Irrigation District, and from which said Tranquillity Irrigation District also pumps water for agricultural uses of lands within the boundaries of said Tranquillity Irrigation District, at the locations shown on Exhibit "A" hereof, whenever the flow of said San Joaquin River exceeds 1360 second-feet at White House, a water measuring station located on said San Joaquin River, near Mendota, California.

VIII.

That the representation of complainants in intervention's interest by existing parties is or may be inadequate and that complainants in intervention are or may be bound by judgment in the above entitled action and that complainants in intervention are so situated that they will be adversely affected by distribution of property which is subject to the control of the above entitled court. [1126]

And For A Further, Separate and Second Cause of Action In Intervention, the complainants in intervention, Tranquillity Irrigation District, Raymond Costales, William E. Clotz, N. D. Hughes, Iva Johnson and Frank Miller, on behalf of themselves, and all other landowners within the boundaries of the Tranquillity Irrigation District, allege as follows:

I.

That complainants in intervention, for the purpose of informing the court of their right to repre-

sent other landowners in the Tranquillity Irrigation District, Raymond Costales, William E. Clotz, and N. D. Hughes, are and were at all times herein mentioned Directors of the Tranquillity Irrigation District, that Iva Johnson, is and was at all times herein mentioned the Secretary of the Tranquillity Irrigation District, and that Frank Miller is and was at all times herein mentioned the Manager of Tranquillity Irrigation District; that Tranquillity Irrigation District, Raymond Costales, William E. Clotz, N. D. Hughes, Iva Johnson and Frank Miller are and were at all times herein mentioned landowners owning lands within the boundaries of Tranquillity Irrigation District, which are and were at all times herein mentioned riparian to said San Joaquin River and said Fresno Slough, a part, inlet and arm of said San Joaquin River, and have riparian, prescriptive, appropriative, rights established by court decree and by contracts and other rights in and to the waters of said San Joaquin River and of said Fresno Slough, and the right to use the same; that the question, which is the subject of this complaint in intervention, is one of common and general interest to all landowners owning lands within the boundaries of Tranquillity Irrigation District; that all lands within the boundaries of said Tranquillity Irrigation District, with the exception of the reservoir of Tranquillity Irrigation District shown on Exhibit "A" hereof, and at all times herein mentioned, are and were riparian to said San Joaquin River and to said Fresno Slough, which said Fresno Slough is and was at all

times herein mentioned a [1127] part, inlet and arm of said San Joaquin River, as aforesaid, and which said owners of said lands within the boundaries of said Tranquillity Irrigation District and said Tranquillity Irrigation District are and were at all times herein mentioned the owners of and entitled to use by virtue of riparian, prescriptive, appropriative or other rights owned by them twelve per cent (12%) of all of the entire natural flow of the San Joaquin River measured at White House, a water measurement station located on said San Joaquin River near Mendota, California in excess of 1360 second-feet as said natural flow would in the course of nature flow down said San Joaquin River and past said White House; that the aforementioned threatened and intended illegal acts of defendants will adversely affect and prejudice not only complainants in intervention and their rights, but all other landowners whose lands lie within the boundaries of said Tranquillity Irrigation District, numbering approximately one hundred (100), and whose lands are riparian or abut or border on said San Joaquin River and said Fresno Slough, at all times herein mentioned a part, inlet and arm of the San Joaquin River and who by virtue of their riparian, appropriative, prescriptive and other rights and have the right to use said 12% of the waters of said San Joaquin River in excess of 1360 second-feet measured at White House, as aforesaid; that all of the lands of the landowners within the boundaries of Tranquillity Irrigation District overlie the underground and percolating water, water stratas

and subterranean streams into which said San Joaquin River percolates, flows, seeps and feeds and which supports and sustains said underground and percolating waters, streams and stratas underlying the lands within the boundaries of said Tranquillity Irrigation District and whose interest in the subject matter in the above entitled action is identical in whole or in part with that of intervening complainants; that said parties are very numerous and that it is and will be impracticable to bring them all before the court; that said other landowners, as owners of land overlying the same common underground water resources, as aforesaid and as [1128] owners of land bordering or abutting or riparian to said San Joaquin River and as owners of riparian, appropriative, prescriptive and other rights in and to the waters of the San Joaquin River system, are united in interest with complainants in intervention; that for these reasons complainants in intervention institute and prosecute this suit for their own benefit and for the benefit of all other landowners whose lands abut on or border the natural channel of said San Joaquin River or which overlie, underground and percolating waters and subterranean streams fed by, sustained, supported, percolating or flowing from said San Joaquin River within said Tranquillity Irrigation District; that the institution and prosecution of this suit as a class suit, is not only meet and proper, as aforesaid, but likewise the granting of the relief sought herein will serve to prevent and obviate a multiplicity of actions; that it is highly important that a comprehensive and final adjudication be had, at as early

a date as possible, of the extent of any surplus water, if any exists, the existence of which complainants in intervention deny, which might be available from the San Joaquin River for diversion through the canals and other works of diversions of defendants away from and out of the watershed of said San Joaquin River to lands non-riparian to said San Joaquin River, to lands within the border of said defendant public corporations; that in this way the irrigators of lands outside of the watershed of said San Joaquin River and within the boundary of said defendant public corporations will know how much, if any, water can be reasonably expected to be made available through said source; that unless this is done, and if the plans, announcements and aforementioned intended illegal, unlawful and unauthorized acts and diversions of defendants are allowed to go unquestioned at present, great and extensive areas of arid lands, situated and lying outside the watershed of said San Joaquin River which are not now, and never have been, placed in cultivation or irrigated, will be cultivated and prepared for crops by farmers at great expense and in the expectation of receiving an [1129] adequate supply of irrigation water from said San Joaquin River and said hopes and expectations will be ultimately proved and determined to be without foundation; and if said matters aforementioned are not now completely and finally adjudicated in one comprehensive suit, a large number of lawsuits will ultimately be filed which will greatly and seriously impede the carrying out and achievement of the purposes and objects of said defendant

public corporations of said complainants in intervention and their fellow landowners in this said paragraph mentioned.

II.

That intervening complainants and said other landowners within said Tranquillity Irrigation District are the owners of and entitled to the full use and benefit of twelve per cent (12%) of all of the natural flow of waters of said San Joaquin River in excess of 1360 second-feet measured at said White House on said San Joaquin River, as the said San Joaquin River, in its natural state, would flow down said San Joaquin River (except for said illegal and unlawful storage, diversions and transportation of the waters of said San Joaquin River by defendants, as aforesaid, and said threatened, illegal and unlawful storage, diversions and transportation of the waters of said San Joaquin River by said defendants) for the diversion and storage by intervening complainants and other landowners within the boundaries of said Tranquillity Irrigation District for agricultural and other reasonable beneficial uses of said waters within the boundaries of said Tranquillity Irrigation District; that said Tranquillity Irrigation District is located in a water deficient area (including the area within the boundaries of said Tranquillity Irrigation District) wherein the water level of the wells of Tranquillity Irrigation District and its landowners and said adjacent water-deficient water area is continually lowering; that in addition to the maintenance of the full flow of said San Joaquin River down the said

channel of said river to sustain the underground percolating water, water stratas and subterranean streams underlying said [1130] boundaries of said Tranquillity Irrigation District, intervening complainants need said above mentioned surface flow of 12% of said 1360 second-feet of water for present and future reasonable beneficial uses and surface irrigation of the lands within the boundaries of said Tranquillity Irrigation District and to sustain the percolating waters, water stratas and subterranean streams underlying said Tranquillity Irrigation District, together with additional water for its present and future beneficial and reasonable uses and needs out of said San Joaquin River before any diversions of said water by defendants.

III.

That said Tranquillity Irrigation District for the past seven (7) years has offered to pay defendants' agents and employees of said United States Bureau of Reclamation a reasonable pro rata amount of the costs of storage at Friant Dam of any of its share of the waters or the use thereof of said San Joaquin River which said Tranquillity Irrigation District is entitled to and even to purchase additional water necessary to the beneficial uses of said Tranquillity Irrigation District from said defendants' agents and employees of said United States Bureau of Reclamation out of said Friant Dam before any of said waters of said San Joaquin River are diverted out of said Fresno County, out of the watershed of said San Joaquin River wherein the waters of said San Joaquin River orig-

inate and from lands adjacent to said San Joaquin River (including said lands within the boundaries of said Tranquillity Irrigation District), which can be conveniently served with waters of said San Joaquin River, but said defendants have illegally and unlawfully refused said offers, even though said Tranquillity Irrigation District needs additional water of said San Joaquin River in addition to its 12% of water of said San Joaquin River in excess of 1360 second-feet of the natural flow of said San Joaquin River at White House; all as aforesaid, but that defendants illegally, in excess of their authority and offices, all as aforesaid, continue to illegally store, divert and transport, and threaten to [1131] continue to illegally store, divert and transport practically all of said water of said San Joaquin River (including those owned and the use of which complainants in intervention are entitled to) out of the watershed of the said San Joaquin River, wherein the waters of the said San Joaquin River originate, out of Fresno County and away from riparian and adjacent lands of said San Joaquin River, which said lands can all be conveniently supplied with water of said San Joaquin River, and to divert and carry the same, illegally and unlawfully, as aforesaid, to lands, persons and corporations which are not legally entitled to the same, all as before alleged.

Wherefore, complainants in intervention pray judgment against defendants as follows:

1. That defendants be forever enjoined from impounding and storing of the San Joaquin River

waters behind Friant Dam and from making seasonal or cyclic storage of said waters behind Friant Dam and cyclic release of said waters from said Friant Dam.

2. That defendants be forever enjoined from diverting and transporting said waters of said San Joaquin River away to lands not riparian to said San Joaquin River, to lands, the owners of which have no riparian, prescriptive, appropriative or other rights to the waters of said San Joaquin River and to lands lying without the watershed of said San Joaquin River and from selling or entering into contracts for the sale of the waters of said San Joaquin River.

3. That in event the above entitled court refuses the first two (2) prayers hereinabove set forth, and only in such event, then, in lieu thereof, that the above entitled court make a physical solution of rights and claims of complainants in intervention and other parties hereto in and to the waters of said San Joaquin River as the term "physical solution" is used in the decisions of the Supreme Court of California. [1132]

4. For such other and further relief as may seem meet and equitable in the premises.

Dated: January 3, 1951.

/s/ CLAUDE L. ROWE,
Attorney for Tranquillity Irrigation District. [1133]

Lodged January 4, 1952.

[Endorsed]: Filed May 7, 1953.

[Title of District Court and Cause.]

ANSWER TO AMENDED COMPLAINT IN INTERVENTION OF THE STATE OF CALIFORNIA

(By Plaintiffs)

Come now the plaintiffs in the above entitled action and answering the Amended Complaint in Intervention of the State of California and, as grounds for said Answer, admit, deny and allege as follows:

I.

Answering paragraphs I and II of said Amended Complaint in Intervention, plaintiffs admit that the State of California is the technical owner of the water to be used in and by said Central Valley Plan; but, in this regard, allege that the State of California holds the same for its inhabitants and is without power to sell or assign the same and allege that its citizens and inhabitants have certain use of usufructuary rights thergin—particularly as riparian and overlying owners for the right to the flow of said San Joaquin River and to the use of the same for beneficial purposes on and under the lands set forth in the complaint of plaintiffs on file herein and that the water filings referred to in the said Amended Complaint in Intervention and assignment thereof are void; plaintiffs are informed and believe, and upon such information and belief deny that Bulletins [1114] Nos. 25, 26 and 29 of the Division of Water Resources, Department of Public Works, of the State of California, substantially set

out the plans, purposes and features of said Central Valley Project and deny that the same have been approved and adopted by the Legislature of the State, but, in this regard, allege that the true plans, purposes and features of said project are set out in the Constitution of the State of California and the State Water Code.

II.

Answering Paragraph III of said Amended Complaint in Intervention, plaintiffs deny that all of the Acts of Congress, applicable to the construction and operation of the Central Valley Plan in California, are set forth in said Paragraph III.

III.

Answering Paragraph IV of said Amended Complaint in Intervention, plaintiffs allege that in addition to the major engineering features set forth in Paragraph IV the Central Valley Project includes a hydroelectric plant or plants to be located at or near Friant, and that the Bureau of Reclamation of the United States and said defendants are not carrying out said Central Valley Plan in that they have failed to construct a hydroelectric plant or plants at or near said Friant Dam, on said San Joaquin River.

IV.

Answering Paragraph V of said Amended Complaint in Intervention, plaintiffs deny that they entered into the Miller & Lux contracts referred to therein so that they could store water in Friant,

free of the claims of any other parties, the waters of the San Joaquin River arising above said Friant Reservoir or to divert the same, as alleged in said Paragraph V; and plaintiffs deny that the Central Valley Plan or the State Water Plan requires that there be but a minimal flow, if any, between Friant Dam and Mendota Pool, but, in this regard, allege that the laws, statutes and the Constitution of the State of California require otherwise. [1115]

V.

Answering Paragraph VI of said Amended Complaint in Intervention, plaintiffs allege that all of the applications therein referred to and purportedly assigned to the United States Bureau of Reclamation are without right, title or effect, and are void and illegal.

VI.

Answering Paragraph VIII of said Amended Complaint in Intervention, plaintiffs deny that the Central Valley Project will provide a stabilized source of supplemental water supply, as in said Paragraph VIII alleged; and, in this regard, allege that Friant Dam and its diversion works do not constitute a reasonable or beneficial use or a proper use of the waters of the San Joaquin River, but allege that the storage and diversions at Friant Dam by the defendant employees of the United States Bureau of Reclamation is wasteful, unreasonable, unscientific, improperly engineered and in violation of the Constitution, Laws and Statutes of the State of California.

VII.

Answering Paragraph IX of said Amended Complaint in Intervention, plaintiffs deny that they have no right to the whole flow of the San Joaquin River, as alleged in Paragraph IX thereof and deny that they should have to take compensation for any damages; but, in this regard, allege that their damages are irreparable and that they will be irreparably damaged if the plans of said defendants are carried into operation or if the so-called construction and interpretation of the Central Valley Project, as set forth in the said Amended Complaint in Intervention, is carried out.

Wherefore, plaintiffs pray judgment in accordance with their complaint on file herein, as amended to date.

/s/ CLAUDE L. ROWE,
Attorney for Plaintiffs. [1116]

Duly Verified.

[Endorsed]: Filed January 23, 1952.

[Title of District Court and Cause.]

ORDER ADMITTING CERTAIN PERSONS AS NAMED PARTY PLAINTIFFS

Henry H. Engleman, Robert C. "Red" Arnold, Jesse Frank Martin, C. A. Hawkins and Carl Harry Johnson, having appeared at the trial of the above entitled matter, and after being duly sworn, requested in open court that they become named party plaintiffs in the above entitled action, and having

testified that they own lands bordering upon or adjacent to the San Joaquin River, and Claude L. Rowe, Esquire, attorney for the named plaintiffs, having requested in open court at the trial of the above entitled action that the said Henry H. Engleman, Robert C. "Red" Arnold, Jesse Frank Martin, C. A. Hawkins and Carl Harry Johnson be admitted as named party plaintiffs, and good cause appearing therefor, and it appearing that their admission as named party plaintiffs would be in the interest of justice,

Now, Therefore, It Is Ordered, Adjudged and Decreed that Henry H. Engleman, Robert C. "Red" Arnold, Jesse Frank Martin, [1188] C. A. Hawkins and Carl Harry Johnson be, and the same are, hereby allowed to become named party plaintiffs and representatives of the class action in the above entitled action.

Dated: This 20th day of June, 1952.

/s/ PEIRSON M. HALL,
Judge of the above entitled
Court. [1189]

[Endorsed]: Filed June 20, 1952.

[Title of District Court and Cause.]

ASSOCIATION OF ATTORNEYS

Notice is hereby given that Edmund G. Brown as Attorney General of the State of California, his successors in office, assistants and deputies, is hereby associated as counsel of record for the defendants

Lindsay-Strathmore Irrigation District, Lindmore Irrigation District, Ivanhoe Irrigation District, Saucelito Irrigation District, Orange Cove Irrigation District Tulare Irrigation District, Lower Tule River Irrigation District, Stone Corral Irrigation District, Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District and Delano-Ealimart Irrigation District in the above entitled action.

Dated September 15, 1952.

MADDOX & ABERCROMBIE,
ERLING H. KLOSTER,
/s/ By JAMES K. ABERCROMBIE,
Attorneys for Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District and Delano-Earlimart Irrigation District. [1258]

JAS. R. McBRIDE,
MADDOX & ABERCROMBIE,
ERLING H. KLOSTER,
/s/ By JAMES K. ABERCROMBIE,
Attorneys for Lindsay-Strathmore Irrigation District and Lindmore Irrigation District.

JAS. R. McBRIDE,
E. I. FEEMSTER,
MADDOX & ABERCROMBIE,
ERLING H. KLOSTER,
/s/ By JAMES K. ABERCROMBIE,
Attorneys for Ivanhoe Irrigation District.

LEROY McCORMICK,
MADDOX & ABERCROMBIE,
ERLING H. KLOSTER,
/s/ By JAMES K. ABERCROMBIE,
Attorneys for Saucelito Irrigation District and Orange Cove Irrigation District.

CALVIN L. RUSSELL,
RUSSELL B. HENRY,
MADDOX & ABERCROMBIE,
ERLING H. KLOSTER,
/s/ By JAMES K. ABERCROMBIE,
Attorneys for Tulare Irrigation District and Lower Tule River Irrigation District.

JOHN R. LOCKE,
MADDOX & ABERCROMBIE,
ERLING H. KLOSTER,
/s/ By JAMES K. ABERCROMBIE,
Attorneys for Stone Corral Irrigation District.

The within association of attorneys is hereby accepted.

Dated September 15, 1952.

EDMUND G. BROWN,
Attorney General of the State of California,
/s/ By B. ABBOTT GOLDBERG,
Deputy. [1259]

Affidavit of Service by Mail Attached.

[Endorsed]: Filed September 16, 1952.

[Title of District Court and Cause.]

ORDER MODIFYING ORDER OF AUGUST 22, 1952

The trial on the merits of the within cause commenced in Fresno, California, on January 29, 1952 and has continued from time to time to this date and is not yet completed. During the month of August, 1952, the trial on the merits was interrupted in order to hear the motion of the defendant officials of the United States for leave to do certain channelization and the like for the purpose of facilitating temporarily the supply and diversion for irrigation used by pumps located on and pumping directly from the river channel in the vicinity of what is described on Exhibit QQ-2 as "Rank Island".

On March 13, 1953 the defendants gave oral notice that they desired the appointment of a Court's Agent under the terms of the Order of August 22, 1952; thereafter the Court indicated that a hearing should and would be held on such request which hearing was ultimately set to commence on April 7, 1953 at which time the plaintiffs gave oral notice that they desired to move, and did move for an order to require the defendant officials to increase the release of the water from Millerton Lake directly into the river channel above the amount permitted [1328] by the Order of August 22, 1952; and the Court, on March 25, 1953, ordered that the releases from Millerton Lake to the main channel of the San Joaquin River should not be reduced below

the then releases of approximately 900 c.f.s. until the completion of said hearing.

Now, therefore, without adjudicating or indicating any opinion as to the rights, if any, of any or either of the parties to this action, or on any issue on or connected with the merits of the case in chief; and it being agreed that nothing contained in this Order or the Order of August 22, 1952, or the Order of August 29, 1951, or the Order of August 6, 1951, or the Order of August 4, 1951, adjudicated or indicated any conclusion or determination on any of the rights of any of the parties to the within action or on any of the merits or any phase of the merits of the case in chief; and it being further agreed that neither the within nor any of the said Orders will be asserted to be an adjudication or indication of any rights or a waiver of any claims of rights of any of the parties on the merits or any phase of the merits or as a precedent which may be claimed to affect the rights of any of the parties on the merits, or any phase of the issues on the merits; and it being further agreed that the within Order is limited to, and for the specific purpose and is not, and is not intended to require any release of water for the purpose of affecting or influencing the underground waters involved in the within lawsuit but solely to provide a temporary supply during the irrigation season of 1953 ending on or about Septen ber 30, 1953, for those who pump water directly from the channel of the San Joaquin River, between Friant Dam and Gravelly Ford.

Now, Therefore, It Is Hereby Ordered:

1. That the defendant officials of the Bureau of Reclamation may gradually reduce releases of water from Lake Millerton to the main channel of the San Joaquin River to the lowest [1329] practicable rate that will provide an adequate water supply for a reasonable and beneficial use on their lands (except for necessary drainage) by the water users taking directly from the river from Friant Dam and Gravelly Ford and under the conditions and provisions as follows, viz.:

(a) H. H. Wheaton is appointed as the Court's Agent. His compensation shall be the same and he shall be paid in the same manner as provided in the above mentioned previous orders of the court and subject to the same conditions as to the reservation for the assessment of his compensation as costs.

(b) He shall advise the Bureau of Reclamation of any physical work to be done on, or at pumps, or in the vicinity of pumps so as to permit the water users taking water directly from the river between Friant and Gravelly Ford to take a sufficient quantity of water to enable each of said pumps to pump water freely in a sufficient depth of water at the intake of each pump to permit each pump to operate without taking air or any unreasonable (i.e., damaging) amount of sand;

(c) The time and extent of the reductions of discharge from Lake Millerton shall be subject to the condition that the Court's Agent agrees that such reductions of discharge or releases from Lake Millerton to the main channel of the River shall be sufficient to operate the pumps as specified in

1(b) hereof; provided that no reduction of releases from Lake Millerton to the River below 400 c.f.s. shall be made, or authorized by the Court's Agent, without the prior approval of the court.

(d) It presently appears that two pumps on the Holland property designated as Holding 31 on Exhibit A-9-A-1 and two pumps on the Howard property, designated as Holding 63 on Exhibit A-9-A-1, require some modification or change in order to pump from the river at a flow of less than 500 c.f.s. release from Friant Dam. The Bureau of Reclamation will do [1330] and perform such work and alterations upon said pumps and/or the area adjacent to them, and such other physical work at other pumps and places on the river where pumps are taking water directly from the channel of the river as in the opinion of the Court's Agent will permit such pumps to operate as specified in paragraph 1(b) hereof. In the event any other changes or modifications or alterations of pumps pumping directly from the river or of the land or river adjacent thereto are necessary in the opinion of the Court's Agent, the Court's Agent shall notify the Bureau of Reclamation which shall promptly do and perform such repairs, work, or modifications.

(e) To facilitate compliance with this order, the agents, employees and contractors of the Bureau of Reclamation shall be provided with, and shall have reasonable access to the properties of the plaintiffs upon which are located pumps upon which it may be necessary to do work under this Order, over, through and across which access is required,

and also to enable the personnel of the Bureau of Reclamation and the Court's Agent to make reasonable inspection of said pumps, facilities and points covered hereby.

(f) The term "reasonable and beneficial use" of water as herein used with relation to those users of water who have been pumping directly from the river for the purpose of this order only is hereby defined to mean the general use of water for agricultural purposes of all nature and kind and for domestic uses. Agricultural purposes is not limited to the mere growing of crops but to such other activities such as stock raising and the like which are and have been commenced and carried on by the owners of lands who pump water directly from the river channel between Friant Dam and Gravelly Ford.

(g) The period of time of the effective date of this order is between now and September 30, 1953, but the court reserves the right to make any further orders herein or changes or [1331] modifications hereof or to vacate this order or any part of it at any time with notice upon proper showing.

2. Anything in the Orders of August 22, 1952, August 29, 1951, August 6, 1951 or August 4, 1951, contrary to the terms of the within order is hereby modified to conform to the within order.

3. This order does not contain findings of fact and conclusions of law for the reason that it is made with the consent of the defendants, and the plaintiffs have waived the right to require them.

4. None of the pumps serving lands of those who

have heretofore settled with the Bureau of Reclamation are comprehended by, or included in, the within order.

Dated at Fresno, California, April 24th, 1953, 11:20 a.m.

/s/ PEIRSON M. HALL,
Judge. [1332]

[Endorsed]: Filed April 24, 1953. Docketed and Entered April 28, 1953.

[Title of District Court and Cause.]

ORDER ALLOWING FILING OF COMPLAINT IN INTERVENTION BY THE CITY OF FRESNO, A MUNICIPAL CORPORATION

The City of Fresno, a municipal corporation, on or about the 3rd day of January, 1952, having filed a written Notice of Motion for Permission to File a Complaint in Intervention by said City of Fresno, a municipal corporation, in the above entitled matter, together with its proposed verified Complaint in Intervention in the above entitled matter, both said Motion and proposed Complaint in Intervention being dated January 3rd, 1952, and which said Motion, after continuance, was on or about the 17th day of January, 1952, heard by the above entitled Court, and said above entitled Court having on the 17th day of January, 1952, ordered said Motion for Permission to file a Complaint in [1365] Intervention by said City of Fresno, a municipal corporation, in the above entitled matter, off calendar, to

be reset on Notice, and the said City of Fresno, a municipal corporation, having on the 17th day of April, 1953, by written Motion, dated April 17th, 1953 on file herein, upon appropriate notice, renewed its Motion for order permitting the filing of a Complaint in Intervention by said City of Fresno, a municipal corporation, in the above entitled action; and the hearing of said motion being continued by the above entitled Court until Tuesday, May 5th, 1953, at which time said Motion was argued by the attorneys for the various parties herein, and the Court having found that due and legal notice of said motion was given to all of the parties hereto, and good cause being shown therefor;

It Is Hereby Ordered, Adjudged and Decreed That said Motion of said City of Fresno, a municipal corporation, dated the said 17th day of April, 1953, and hereinabove referred to, be granted and that the proposed verified Complaint in Intervention by said City of Fresno, a municipal corporation, dated said 3rd day of January, 1952 on file herein, be allowed to be filed in the above entitled action, and is ordered filed herein (including both causes of action therein), as a Complaint in Intervention in the above entitled action by said City of Fresno, a municipal corporation.

Dated: May 7th, 1953.

/s/ PEIRSON M. HALL,
District Judge. [1366]

[Endorsed]: Filed May 8, 1953.

[Title of District Court and Cause.]

ORDER ALLOWING FILING OF COMPLAINT IN INTERVENTION BY TRANQUILLITY IRRIGATION DISTRICT, A PUBLIC CORPORATION

The Tranquillity Irrigation District, a public corporation, on or about the 3rd day of January, 1952, having filed a written Notice of Motion for Permission to file a Complaint in Intervention by said Tranquillity Irrigation District, a public corporation, in the above entitled matter, together with its proposed verified Complaint in Intervention in the above entitled matter, both said Motion and proposed Complaint in Intervention being dated January 3rd, 1952, and which said motion, after continuance, was on or about the 17th day of January, 1952, heard by the above entitled Court, and said above entitled Court having on the 17th day of January, 1952, ordered said Motion for Permission to file a [1367] Complaint in Intervention by said Tranquillity Irrigation District, a public Corporation, in the above entitled matter, off calendar, to be reset on Notice, and the said Tranquillity Irrigation District, a public corporation, having on the 17th day of April, 1953, by written Motion dated April 17th, 1953, on file herein, upon appropriate notice, renewed its Motion for order permitting the filing of a Complaint in Intervention by said Tranquillity Irrigation District, a public corporation, in the above entitled action; and the hearing of said motion being continued by the above

entitled Court until Tuesday, May 5th, 1953, at which time said Motion was argued by the attorneys for the various parties herein, and the Court having found that due and legal notice of said motion was given to all of the parties hereto, and good cause being shown therefor;

It Is Hereby Ordered, Adjudged and Decreed that said Motion of said Tranquillity Irrigation District, a public corporation, dated the 17th day of April, 1953, and hereinabove referred to, be granted and that the proposed verified Complaint in Intervention by said Tranquillity Irrigation District, a public corporation, dated said 3rd day of January, 1952, on file herein be allowed to be filed in the above entitled action, and is ordered filed herein (including both causes of action therein), as a Complaint in Intervention in the above entitled action by said Tranquillity Irrigation District, a public corporation.

Dated: May 7th, 1953.

/s/ PEIRSON M. HALL,
District Judge. [1368]

[Endorsed]: Filed May 8, 1953.

The District Court of the United States, Southern District of California, Northern Division

No. 685-ND Civil

EVERETT G. RANK, et al., Plaintiffs,

vs.

RICHARD BOKE, MARTIN BLOTE, JACK RODNER, et al., Defendants,

TRANQUILLITY IRRIGATION DISTRICT, a public corporation, CITY OF FRESNO, a Municipal Corporation,

Complainants in Intervention,

vs.

RICHARD BOKE, MARTIN BLOTE, JACK RODNER, et al.,

Defendants in Intervention.

NOTICE OF MOTION TO JOIN UNITED STATES AS A PARTY DEFENDANT

To: Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District, Delano-Earlimart Irrigation District, Lindsay-Strathmore Irrigation District, Lindmore Irrigation District, Ivanhoe Irrigation District, Saucelito Irrigation District, Orange Cove Irrigation District, Tulare Irrigation District, Lower Tule River Irrigation District, and Stone

Corral Irrigation District, and to Maddox & Abercrombie & Erling H. Kloster, James R. McBride, LeRoy McCormick, John R. Locke, B. Abbott Goldberg, and Henry & Kuney, their attorneys; Edmund G. Brown, Attorney General of the State of California; B. Abbott Goldberg, Deputy Attorney General of the State of California; Herbert Brownell, Attorney General of the United States; Joseph F. McPherson, Special Assistant to the Attorney General of the United States; Chowchilla Water District, et al., and to Green, Green & Plumley, its attorneys; Madera Irrigation District, et al., and to David E. Peckinpah and Harold M. Child, its attorneys; Southern San Joaquin Municipal Utility District, et al., and to J. O. Reavis, its attorney; Walter S. Binns, United States Attorney for the Southern District of California; and to the People of the State of California, intervenors; and to Edmund G. Brown and B. Abbott Goldberg, and Adolph Moskovitz, their attorneys. [1392]

You, and Each of You, Will Please Take Notice that the plaintiffs will move the above-entitled court on Wednesday, the 24th day of June, 1953, at the hour of 2:00 p.m. of said day, before the Honorable Peirson M. Hall, Judge of said court, in the courtrooms of said court, Federal Building, Fresno, California, for an order of the above-entitled court joining the United States as a defendant in the above-entitled suit; said motion will be made upon the

grounds that the above-entitled action is, among other things, an action for the adjudication of rights to the use of water of a river system; to-wit, the San Joaquin River, or other source and for the administration of such rights and upon the further ground that the United States is the owner of part of the water rights in and to said San Joaquin River and is in the process of acquiring water rights by appropriation in and to the waters of said river system: to-wit, the San Joaquin River under State law (to-wit, the State of California) by purchase, by exchange and otherwise.

Said motion will be based on this Notice of Motion, on all pleadings and exhibits on file herein and the official court reporter's transcript of the evidence, and proceedings herein, which said transcript is on file in the above-entitled court.

Dated: This 11th day of June, 1953.

/s/ CLAUDE L. ROWE,
Attorney for Plaintiffs.

/s/ CHRISTIAN M. OZIAS,
/s/ CLAUDE L. ROWE,
Attorneys for Complainant in Intervention, City of Fresno.

/s/ CLAUDE L. ROWE,
Attorney for Complainant in Intervention, Tranquillity Irrigation District. [1393]

[Endorsed]: Filed June 11, 1953.

[Title of District Court and Cause.]

SUMMONS ON COMPLAINT IN INTERVENTION, CITY OF FRESNO

To the above named Defendants:

You are hereby summoned and required to serve upon Claude L. Rowe, plaintiff's attorney, whose address is 910 Security Bank Bldg., Fresno 21, California, an answer to the complaint which is herewith served upon you, within sixty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] EDMUND L. SMITH,
Clerk of Court.
/s/ (Illegible),
Deputy Clerk.

Return On Service of Writ

United States of America,
Southern District of California—ss.

I hereby certify and return that I served the annexed Summons and on Complaint in Intervention on the therein-named Jack Rodner, as District Manager of the Bureau of Reclamation by handing to and leaving a true and correct copy thereof with him personally at Fresno in said District on the 29th day of May, 1953.

ROBERT W. WARE,
U. S. Marshal.
/s/ DAVID E. HAYDEN,
Deputy.

Fees 2.00
Mlg. .60

2.60

[Endorsed]: Filed June 17, 1953.

[Title of District Court and Cause.]

SUMMONS ON COMPLAINT IN INTERVENTION, TRANQUILLITY IRRIGATION DISTRICT, ET AL

To the above named Defendants:

You are hereby summoned and required to serve upon Claude L. Rowe, plaintiff's attorney, whose address is 910 Security Bank Bldg., Fresno 21, California, an answer to the complaint which is herewith served upon you, within sixty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Dated: May 29, 1953.

[Seal] EDMUND L. SMITH,
Clerk of Court.
/s/ (Illegible),
Deputy Clerk.

Return On Service of Writ

United States of America,
Southern District of California—ss.

I hereby certify and return that I served the an-

nexed Summons and Complaint on Complaint in Intervention on the therein-named Jack Rodner, as District Manager of the Bureau of Reclamation by handing to and leaving a true and correct copy thereof with him personally at Fresno, California in said District on the 29th day of May, 1953.

Fees 2.00
Mlg. .60

2.60

ROBERT W. WARE,
U. S. Marshal.
/s/ By DAVID E. HAYDEN,
Deputy.

[Endorsed]: Filed June 17, 1953.

[Title of District Court and Cause.]
* * * * *

RETURN ON SERVICE OF WRIT

(City of Fresno)

I hereby certify and return, that on the 17th day of June, 1953, I received this summons and served it together with the complaint herein as follows: Served on Martin Blote, Regional Water Director of Reclamation Service.

JOHN A. ROSEEN,
United States Marshal,
/s/ By EARL F. INGHAM,
Deputy U. S. Marshal.

Marshal's Fees:
Travel None
Service $2.00

$2.00

[Endorsed]: Filed June 19, 1953.

[Title of District Court and Cause.]

* * * * *

RETURN ON SERVICE OF WRIT

(Tranquillity Irrigation District, et al)

I hereby certify and return, that on the 17th day of June, 1953, I received this summons and served it together with the complaint herein as follows:

Served on Richard Boke, Regional Director of the Bureau of Reclamation at Town and Country, North Sacramento, California, June 17, 1953.

Marshal's Fees:
Travel—14c Mi. $1.40
Service 2.00

$3.40

JOHN A. ROSEEN,
United States Marshal,
/s/By EARL F. INGHAM,
Deputy U. S. Marshal.

[Endorsed]: Filed June 19, 1953.

[Title of District Court and Cause.]

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon Claude L. Rowe, plaintiff's attorney, whose address is 910 Security Bank Bldg., Fresno 21, California, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: June 16, 1953.

[Seal] EDMUND L. SMITH,
Clerk of Court,
/s/ (Illegible),
Deputy Clerk.

Return On Service of Writ

(Joseph A. Secara, Arnold Sallaberry, Earl Yocum and Carl Gaumnitz as Directors of the Madera Irrigation District, a corporation, the Madera Irrigation District, a public corporation, people of the State of California, Tranquillity Irrigation District, a public corporation, et al.)

United States of America,
Northern District of California—ss.

I hereby certify and return that I served the annexed Summons on the therein-named Governor of the State of California a true and correct copy of the complaint and judgment by handing to and leav-

ing a true and correct copy thereof with Miss Gallagher, his Agent, personally at Sacramento, California in said District on the 24th day of June, 1953.

Marshal's Fees:
Mileage None
Service $2.00

JOHN A. ROSEEN,
U. S. Marshal,
/s/ EARL F. INGHAM,
Deputy.

[Endorsed]: Filed July 3, 1953.

[Title of District Court and Cause.]

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon Claude L. Rowe, plaintiff's attorney, whose address is 910 Security Bank Bldg., Fresno 21, California, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: June 16, 1953.

[Seal] EDMUND L. SMITH,
Clerk of Court,
/s/ (Illegible),
Deputy Clerk.

RETURN OF SERVICE ON WRIT

(Joseph A. Secara, A. Ridway, Earl Sallaberry, Chester A. Ridway and Carl Gaumnitz, as Directors of the Madera Irrigation District, a public Corporation, et al.)

United States of America,
Northern District of California—ss.

I hereby certify and return that I served the annexed Summons on the therein-named Governor of State of California a true and correct copy of the complaint and judgment by handing to and leaving a true and correct copy thereof with Miss Gallagher, his agent, personally at Sacramento, California in said District on the 24th day of June, 1953.

Marshal's Fees:
Mileage None
Service $2.00

JOHN A. ROSEEN,
U. S. Marshal,
/s/ By EARL F. INGHAM,
Deputy.

[Endorsed]: Filed July 3, 1953.

[Title of District Court and Cause.]

* * * * *

RETURN ON SERVICE OF WRIT

United States of America,
Northern District of California—ss.

I hereby certify and return that I served the an-

nexed Order to show cause on the therein-named Clyde Spencer, Supervising Engineer, California Projects, Bureau of Reclamation, Sacramento, California by handing to and leaving a true and correct copy thereof with Clyde Spencer personally at 2929 Fulton Ave., North Sacramento, California in the said District at 4:15 p.m., on the 28th day of July, 1953.

Marshal's Fees:	$2.00
Mileage—14c mi.	$1.40
	$3.40

JOHN A. ROSEEN,
United States Marshal,
/s/ By WESLEY ERVICH,
Deputy.

[Endorsed]: Filed July 21, 1953.

United States Court of Appeals
For The Ninth Circuit

No. 13,891

UNITED STATES OF AMERICA,
Petitioner,

vs.

UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION, HONORABLE PEIRSON M. HALL, Judge of that Court; H. H. WHEATON, the Court's Agent, Respondents.

PETITION FOR WRIT OF PROHIBITION OR IN THE ALTERNATIVE FOR WRIT OF MANDAMUS

Before: STEPHENS, ORR, and POPE, Circuit Judges

STEPHENS, Circuit Judge

This case originated in this court and arises from the pendency in the United States District Court for the Southern District of California, Northern Division, of the case entitled Rank, et al. v. Krug, et al. (See 90 F.Supp. 773.) The United States pursuant to leave granted filed its petition with us for the issuance of the writ of prohibition or in the alternative for a writ of mandamus, to be directed to Judge Hall, the presiding judge in the Rank v. Krug case, and others. We granted an

order to show cause why an order of Judge Hall's, made April 24, 1953, which amended a former order, should not be vacated, and we further ordered that, pending hearing on the show cause order, the order of April 24, 1953 should be vacated in part.[1] [1472]

Thereafter, Judge Hall filed a motion to strike certain portions of Petitioner's (United States') motion for permission to file. Respondents filed a

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[1] The effective part of our order of June 29, 1953, is as follows:

"It Is Ordered that the Respondents show cause to this Court on July 7, 1953, why a writ of prohibition or a writ of mandamus should not issue directed to the Respondents and commanding them to refrain and desist from taking any further steps or proceedings in connection with the trial of the case of Rank, et al., v. Martin Blote and Jack W. Rodner, et al., sometimes referred to as Rank, et al., v. Krug, et al., Civil No. 681-ND, 685-ND, and associated cases, in the United States District Court for the Southern District of California, Northern Division, and commanding them in connection with that case to refrain and desist from taking any action by way of or pursuant to court orders or otherwise, which affect in any way the operations by the United States of America of Friant Dam, Millerton Lake, or waters impounded or to be impounded from the San Joaquin River in Millerton Lake or from taking any action in regard to any other properties of the United States of America;

"It Is Further Ordered that Respondent Peirson M. Hall, as Judge of said United States District Court forthwith make and enter an order staying until further order of this Court that part of the order dated April 24, 1953, which requires a release of a minimum of 400 cubic feet per second of water from Friant Dam."

motion to dismiss the motion for permission to file the petition for the writ of prohibition etc. Respondents also filed their motion to vacate portions of our order. We granted leave to the State of California and fourteen irrigation districts and a municipal utility district to file an amicus curiae brief. Upon our suggestion, but not our request, the United States made an oral motion that Martin H. Blote be made a party-petitioner which motion was thereafter put in writing and filed with the clerk.

On July 10, 1953, we heard argument on all matters before our court and they were submitted for decision.

The petition of the United States that Martin H. Blote be joined as a party petitioner is denied without prejudice, because the written petition contains conditions or reservations which we decline to consider at this time.

All other motions and petitions, except the relief requested in the petition of the United States, are denied without prejudice because we do not deem them of importance at this juncture.

The case of Rank v. Krug was originally filed in the Superior Court of the State of California in and for the County of Fresno, on or about September 24, 1947, and was thereafter removed to the United States District Court and is now pending in that court. That case arose from the institution and operation of what is commonly termed "The Central Valley Project".

The great Central Valley of California extends

from the Siskiyou Mountains in the north to the Tehachapi Mountains in the south and lies between the foothills of the Sierra on the east and the foothills of the Coast Range on the west. The southerly part of this valley is often called "San Joaquin Valley" and the northerly part "Sacramento Valley". The rainfall is comparatively high in the Sierra, moderate in the Coast Range, and slight and short-seasoned in the Valley. By far, the greater part of the natural water-run-off of the easterly range of mountains, with a much smaller portion of the run-off from the westerly range, form the two rivers, the San Joaquin flowing westerly and then northerly in the San Joaquin Valley, and the Sacramento flowing southerly in the valley of that name. These rivers join near the City of Stockton and their combined waters flow easterly into the world-renowned Bay of San Francisco.

There is a surplus of water in the Sacramento Valley and a deficit of water in the San Joaquin Valley, measured economically. It was and is the purpose of the governments of the United States and of the State of California to transport surplus Sacramento River water into the watershed of the San Joaquin River for economic reasons. In accomplishing the desired ends, dams and transmission conduits have been constructed for the storage and transportation of water to the places of its use. The natural flows of streams have been altered and efforts have been made to adjust and equate the supply of water. As the San Joaquin River emerges from the Sierra easterly from the City

of Fresno and cuts through the foothills, its flow is interrupted by the Friant Dam, and the accumulating water forms the "Millerton Lake". From this lake, with its accumulation of regular and flash run-offs of the river, water is equated and distributed for beneficial uses.

The Rank v. Krug suit concerns the legal right to distribution of the water impounded in Millerton Lake in relation to certain water rights of claimants below the dam, and down to "Mendota Pool", a stretch of about forty miles. The dam is the property [1473] of the United States and it, with the water back of it, is, and since the water has accumulated, has been in the possession of the United States and actually controlled by the United States under its claim of right.

The plaintiffs' claim in the Rank v. Krug action, briefly stated, is that they have the present right to a flow down the San Joaquin River between the named points and that those in charge of the dam and its outlets have and are preventing a sufficient amount of water to flow into the river to adequately supply their rightful beneficial uses.

The project, the law by which it was initiated and constructed, the applicable water law of California and the issues involved in the Rank v. Krug action, may be found described and documented in Rank v. Krug, 1950, 90 F. Supp. 773, in an opinion rendered by Judge Peirson M. Hall upon decision as to a motion for injunction pendente lite. See, also, United States v. Gerlach Live Stock Co., 1950, 339 U.S. 725.

Insofar as it is useful to mention here, the defendants in the pending district court case of Rank v. Krug, being sued individually and officially are: Julius A. Krug, the then Secretary of the Interior of the United States; and the following persons holding the following offices in the United States Bureau of Reclamation, viz: Michael W. Straus, Commissioner; Richard Boke, Regional Director; Martin Blote, Regional Water Master; Jack Rodner, District Manager; R. K. Durant, Construction Engineer and Resident Engineer; also named as defendants are: Madera Irrigation District and its Directors; Southern San Joaquin Municipal Utility District and its Directors; as well as various Doe districts and Doe directors.

As is seen, the United States is not named as a party and the court throughout its entertainment of the action has conducted the case upon its holding that the United States is not a party and is not a necessary or indispensable party to the maintenance of the action. The court has, however, made the suggestion that the United States voluntarily come into the action as a party; and at the time the instant proceeding was submitted, a motion by plaintiffs to make the United States a party had been made but remained unruled upon. (See Title 43 U.S.C.A. §666, a statute permitting the United States to be made a party to water cases, enacted after the institution of the Rank v. Krug suit.) An Assistant Attorney General is the attorney of record for all of the named United States officials and employees who have appeared in the case, and

throughout the proceedings he has actively participated in the interests of the Project as directed by the Attorney General of the United States.

There is nothing new, irregular, or improper in the fact that government attorneys have been and are attorneys for the government officers and employees who have appeared in the case, and that fact, standing alone, does not bring the United States into the case as a party.[2]

That the United States is interested in the issues pending in the district court case is patent, and especially is it interested in the water impounded behind Friant Dam; and the issues, when decided, including interlocutory orders, are subject to and with little doubt will be appealed to the United States Court of Appeals. It is the claim of the United States that there is irreparable waste under the court's order of April 24, 1953, and that waste of water is destruction of the res of the case. We have a duty to preserve our appellate jurisdiction in the district court case since we may well

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[2] See concurring opinion by Judge Pope of this court in United States v. Dollar, 9 Cir., 1952, 196 F.2d 551, 554. In the following cases the defendants were agents of the United States and appeared in court by the Attorney General. In each of them the court entertained the actions but declared the United States was not a party: United States v. Lee, 1882, 106 U.S. 196; Land v. Dollar, 1947, 330 U.S. 731; Philadelphia Company v. Stimson, 1912, 223 U.S. 605; Sloan Shipyards v. U. S. Fleet Corp., 1922, 258 U.S. 549; Work v. Louisiana, 1925, 269 U.S. 250; Goltra v. Weeks, 1926, 271 U.S. 536; Ickes v. Fox, 1937, 300 U.S. 82.

have to exercise it. Title 28 U.S.C.A. §1651; Ex parte Peru, 1943, 318 U.S. 578, 582; Gulf Research & Development Co. v. Harrison, 9 Cir., 1950, 185 F.2d 457; Roche v. Evaporated Milk Ass'n, 1943, 319 U.S. 21. Our jurisdiction to entertain the United States' petition depends upon the necessity of our order to preserve the res in the appeal. It is obvious that the res, to the extent that water is wasted because of the district court's order, is destroyed. We, therefore, hold that the United States has the right to petition us and that we have the right [1474] to entertain the petition of the United States in prohibition or mandamus. See Ex parte State of New York, No. 1, 1921, 256 U.S. 490, 503; Ex parte Peru, 1943, 318 U.S. 578.

The Rank v. Krug action has been on trial for approximately two hundred court days, and the relevant water problems have been presented in detail with governmental experts and counsel actively participating. However, the United States is not a party to the action, and no judgment in the case can be entered against it, and no judgment that may be entered in the case can be res judicata as to the United States. See United States v. Dollar, 9 Cir., 1952, 196 F.2d 551; United States v. Lee, 1882, 106 U.S. 196, and the line of cases following the Lee case.

The showing to us is conclusive of the fact that the agencies, officials, and employees of the United States whose duties touch the subject matter of the Rank v. Krug action have been diligent in seeing that the court is fully informed as to applica-

ble fact and law. And it is beyond question that the court is now better informed on all relevant facts than any other person not specially interested in the matter. The evidence is all in and the case awaits only argument and incidental rulings before it stands submitted for decision.

The Court's action in making the consent order of April 24, 1953 (a modification of previous consent orders), precipitated the instant proceeding. The order was strictly upon the merits and was made with the commendable intention of protecting all concerned as well as possible until the issues are decided. The judge presiding acted from his accumulated information and upon advice of experts to preserve the status quo as nearly as could be. And the court acted only after consent to the order had been given by all parties and by the Secretary of the Interior of the United States, and the United States Attorney General.[3] A sum-

[3] The order of the judge in Rank v. Krug, which precipitated the instant petition of the United States, was made after an appeal had been made to it to take action to assure adequate water for plaintiffs during the 1953 summer season. The plaintiffs were complaining that the water being released was insufficient and a conference was held on the 21st day of April, 1953, as to the amount of water reasonably necessary to be released. The Honorable Peirson M. Hall, the presiding judge, after stating that the meeting was as has just been related and that any concession or rescission on anybody's part would have no effect on the ultimate decision, asked if all agreed, and each person present answered in the affirmative. Present at the meeting in addition to the judge were: Mr. Burton,

mation of the order which authorized the "Court's Agent" to [1475] release water from Friant Dam

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an attorney for the Bureau of Reclamation; Mr. Rowe, attorney for plaintiffs; Mr. Goldberg, a deputy California State Attorney General; Mr. McPherson, a Special Assistant United States Attorney General, attorney for defendants; and Messrs. Child, Abercrombie, Green and Reavis, representing the fifteen defendant water districts.

Following is a portion of the transcript of the April 21, 1953, conference, as set out in an affidavit by Judge Hall: [All emphasis supplied.]

"Mr. McPherson: They have asked the Bureau to consent to it [the order]; and while the representative of the Bureau was here the other day, he said he would agree to 300 second-feet release through September.

"I have been instructed by the Attorney-General not to agree to any order that requires a predetermined release at Friant. * * * I am not informing the court that he would not agree to that; I am sure he would, due to the fact that the districts have, without exception, expressed approval.

"* * * I will ask him for authority to consent to it."

On April 22, 1953:

"Mr. McPherson: * * * I had hoped that you would * * * agree on the form of the order as you propose to enter it, if that can be done, because I am required to teletype Washington. Mr. McKay wants to see it, as does the Attorney General. * * *."

On April 24, 1953:

"Mr. McPherson: Yesterday morning I received a telephone call, which conversation was confirmed by wire from Mr. J. Edward Williams, Acting Assistant Attorney General in charge of the Lands Division, authorizing me to consent to the entry of the order as proposed by the court to the counsel at that meeting in your office day before yesterday——."

[Footnote 3 Continued on Pages 223-224.]

as directed in the order, is set out in the margin.[4]

We deem it to be a wholly unwarranted discourtesy to the trial judge and to the highest United States trial court that the instant proceeding was initiated without the withdrawal of the consent given and even without the knowledge of the Special Assistant United States Attorney General who had been given the authority to consent to the

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[4] The summation of Judge Hall's order of April 24, 1953, by the United States as set out in its petition, is as follows and appears to be substantially correct:

"1. Requires the performance of functions and duties by defendants Blote and Rodner which are contrary to and different from the duties and obligations imposed upon them in their official capacities. That fact likewise prevailed in regard to defendant Boke, prior to his resignation from office.

"2. Requires the release of water from Friant Dam into the San Joaquin River in an amount not less than 400 cubic feet per second.

"3. Necessitates the expenditure of funds by the United States of America for the improvement of private property.

"4. Requires the performance of many acts by employees of the Bureau of Reclamation regarding river improvement and the delivery of water for the benefit of plaintiffs and other landowners situated below Friant Dam.

"5. Requires the performance of many acts by the employees of the United States of America who are not before the Respondent Court.

"6. Provides for the appointment of a 'Court Agent' with broad powers to require the performance of acts by the Bureau of Reclamation and the expenditure of funds of the United States of America.

"7. Requires payment by the United States of America of compensation to the 'Court Agent'."

order.[5] It is practically inconceivable, and we do not believe, that either Mr. Brownell, the Attorney General of the United States, or Mr. McKay, the United States Secretary of the Interior, knowingly would have authorized such action. However, we view the institution of the instant proceeding as an effective withdrawal of consent to the order. The showing before us reveals plainly that the court would not have made the order but for the consent given. Without such consent there seems to be no color of an argument to the effect that the district court had the jurisdiction to order its agent to enter upon and exercise dominion over United States property; and the court well understood the situation. See Larson v. Domestic and Foreign Corp., 1949, 337 U.S. 682.

We therefore hold the order of the district court of April 24, 1953, to be ineffective from and after the date of the institution of the instant proceeding in this court. And we decline at the present juncture of the instant proceeding and of the Rank v. Krug case to interfere with the completion of the trial of the latter case. [1476]

Nothing could be more obvious than that the amicable relations between the United States

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[5] Judge Hall, by affidavit, quotes Mr. McPherson as saying on June 30, 1953: "* * * and in view of the issuance of the writ, of which I received notice for the first time this morning myself." * * *. "* * * As the record shows, I did not know of the application for the issuance of the writ until two or three minutes before or after Judge Hall was served with it this morning."

(through the Secretary of the Interior and the Attorney General), and the moving parties in the district court case under the presiding direction of Judge Hall, should continue through the present dry summer season to the end that irreparable injury should be held to the possible minimum. Therefore, this opinion and decisions indicated are not to be taken as prejudicial to the further cooperation of the United States officials and the trial court, through consent orders or otherwise, to prevent irreparable injury to users of water.

Should the trial court within ten days from date of filing of this opinion enter its order withdrawing its order of April 24, 1953, in accord with this opinion, this court will enter its order declining the issuance of any writ. Otherwise, this court will order the issuance of the appropriate writ in accordance with this opinion.

Pope, Circuit Judge, concurring:

With the minor exception hereafter noted I concur in Judge Stephens' opinion. It is apparent that if the case of Rank v. Krug should ever reach this court on appeal from final judgment, we may then be confronted with a problem similar to that discussed in Larson v. Domestic & Foreign Corp., 337 U.S. 682. Our present opinion concerns only the order of April 24, 1953, and that for the reason that we may now move only so far as necessary to protect our appellate jurisdiction against loss of what Judge Stephens calls "the res of the case". This limitation of the scope of our opinion should not be construed to be an expression of our views

as to those questions which we may properly consider if there should be such an appeal.

My own interpretation of the so-called "consent to the order" of April 24 gives it a rather limited effect. When the colloquy quoted in footnote 3 of the opinion took place, Mr. McPherson, the Special Assistant to the Attorney General was representing only Boke, Blote, Rodner and Durant. The United States was not a party, and neither the

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[Footnote 3 Continued from Pages 218-219.]

"* * *

"Mr. McPherson: —Wednesday afternoon, and it was teletyped to the Department of Justice as well as to the Department of the Interior, and provided that the consent, the authorization, came from the Department of Justice, and provided that the Department of the Interior approved."

Mr. McPherson then moved an amendment to the proposed order, and the court denied it.

"Mr. McPherson: Very well, your Honor: * * *.

"The Court: Does your consent stand?

"Mr. McPherson: Let me finish my statement, then I will indicate my consent—I haven't given that as yet. I am in receipt of a teletype from Mr. Boke, one of the official defendants in the case, speaking for himself, Blote and Durant, and also have an oral confirmation of that from Mr. Rodner, the other official defendant, indicating that they are willing to have the order entered, on my advice that the United States and these defendants are not prejudiced in the further handling of this litigation, which I have done, based upon the recitals in the order that it is solely a compromise and is without prejudice to the position of any or either of the parties.

"The Court: And I suppose also upon the statements that all counsel have made in the record.

"Mr. McPherson: Yes. And further that the record shows a like statement by all counsel giving

Secretary of the Interior nor the Commissioner of Reclamation had been served. And while McPherson, as attorney for those he did represent, naturally sought the approval of the Departments of Justice and Interior, the approval was to the effect that Boke, Blete, Rodner and Durant might consent to the order. These were the four whose previous efforts to have the case dismissed on the ground that it was a suit against the United States, had been denied. In short, as I view it, it was these four defendants alone who consented. I cannot see that the United States, as such, consented.

In my opinion, the extent to which the April 24

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the consent of everyone, except counsel for the plaintiffs who, though not consenting, agree to waive findings of fact and conclusions of law, and also to waive any right of appeal he might have from the order.

"And based upon those assumptions, I consent to the entry of the order as made.

"Mr. Rowe: To make it clear——

"Mr. McPherson: I forgot to tell the court—I forgot to mention a telegram from Mr. Fred D. Aandahl, Assistant Secretary of the Department of the Interior in charge of water and power, who also authorizes my consent upon the conditions stated and upon my giving the advice which I did give, to the effect they would not be prejudiced by the order.

"The Court: Very well."

In another portion of Judge Hall's affidavit, he quotes from the transcript of the record in Rank v. Krug, a statement he made on April 22, 1953, to-wit: "As I have indicated repeatedly, I will not make an order here which is appealable, unless I take the time to draw findings of facts and conclusions of law."

order went was such as to raise serious doubts as to the power of the court to issue it, either with or without the consent of the United States, and regardless of the presence or absence of indispensable parties.

The respondent court, like the Supreme Court and courts of appeals, is a Constitutional court. Cf. Commissioner v. Havemeyer, 296 U.S. 506, 518. Its jurisdiction is limited to "cases" and "controversies" under Art. III, Sec. 2 of the Constitution. Such courts "share in the exercise of the judicial power defined in that section, can be invested with no other jurisdiction, * * * with no power in Congress to provide otherwise". Ex Parte Bakelite Corp'n., 279 U.S. 438, 449. The court, in the exercise of its jurisdiction to determine and adjudicate water rights, would of course have power to make any order necessary or appropriate to preserve the status quo. To that end it could exercise its power to grant an interlocutory injunction, or to appoint a receiver. Such are accepted means whereby courts commonly exercise their judicial power. But the order here in question goes far beyond anything which courts, acting in a purely judicial capacity, have traditionally undertaken to do. Here the court, through its agent, is about to tell the Bureau of Reclamation what work is to be done on or near the pumps of the water users. The Bureau may reduce the quantity of water discharged down stream only if the court's agent agrees that the reduction will allow efficient operation of the pumps, and reduction below 400 second-feet may be

made only with the approval of the court. The Bureau must do work on the water users' pumps as the court's agent may, in his opinion, think required.[1] [1477]

In substance, the court has undertaken to manage and control the flow from Friant Dam, pendente lite, through the court's agent. The agent's functions resemble those of a water master or water commissioner. In California, such an official is appointed by a state administrative agency or department.[2] In Montana, the State district court appoints a water commissioner to distribute the waters adjudicated, or about to be adjudicated, by the court, and he adjusts headgates, employs labor and repairs ditches, all under the directions of the judge, given by telephone or otherwise.[3] But the

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[1] Paragraph 1(d) of the order provides in part: "The Bureau of Reclamation will do and perform such work and alterations upon said pumps and/or the area adjacent to them, and such other physical work at other pumps and places on the river where pumps are taking water directly from the channel of the river as in the opinion of the Court's Agent will permit such pumps to operate as specified in paragraph 1(b) hereof. In the event any other changes or modifications or alterations of pumps pumping directly from the river or of the land or river adjacent thereto are necessary in the opinion of the Court's Agent, the Court's Agent shall notify the Bureau of Reclamation which shall promptly do and perform such repairs, work, or modifications."

[2] Water Code, State of California, Deering's California Codes, Sec. 4050.

[3] Revised Codes of Montana, 1947, Secs. 89-1001-1024.

courts of Montana may be invested with administrative powers. Porter v. Investors Syndicate, 287 U.S. 346, 347. So may federal legislative courts like those of the District of Columbia. Keller v. Potomac Elec. Co., 261 U.S. 428; Postum Cereal Co. v. Calif. Fig Nut Co., 272 U.S. 693; Radio Comm. v. General Electric Co., 281 U.S. 464. But in the cases last cited, the Supreme Court, deriving its power solely from Art. III, Sec. 2, could not entertain them for purposes of review or appeal.

I do not see how the respondent court, likewise limited by Art. III, Sec. 2, could undertake by agent or otherwise, the administrative or executive functions set up in this order. The limitations on a constitutional court were stated by Chief Justice Taft in Old Colony Tr. Co. v. Comm'r. Int. Rev., 279 U.S. 716, 724 as follows: "The Circuit Court of Appeals is a constitutional court under the definition of such courts as given in the Bakelite case, supra, and a case or controversy may come before it, provided it involves neither advisory nor executive action by it." (Emphasis supplied.)

Such a court may enjoin action where necessary to preserve the status quo, but it may not create rights, nor administratively execute them. Thus, while a district court may enjoin the collection of a tax based on an arbitrary overvaluation of property, it may not determine what tax would be valid. Rowley v. Chicago & N.W. Ry., 293 U.S. 102, 112; it may cancel a franchise to take water for breach thereof, but not annul it under a power reserved in the grant, Commission v. Havemeyer, 296 U. S.

306, 518; it may set aside a confiscatory public utility rate but not prescribe a valid one, Central Kentucky Co. v. Comm'n., 290 U.S. 264, 272.

As it appears to me, the order of April 24, 1953, amounted to putting the district court in the water distributing business. I am not aware of any authority upon this point. The dictum of Judge Bourquin in Sain v. Montana Power Co., 20 F. Supp. 843, 847, failed to note that Montezuma Canal Co. v. Smithville Canal Co., 218 U.S. 371, 385, there cited, dealt with an order of the Arizona territorial courts. So I am reduced from "the high ground of authority to the low ground of principle". But it seems to me that a district court may not assume the administration here undertaken, any more than such a court, while trying a suit to enjoin an adjoining landowner from excavating so as to cause subsidence of plaintiff's land and building, could appoint an agent to locate the place and to supervise the work of making the excavation.

However well adapted this order may have been to accomplish a common sense result, I do not see how power to issue it could exist.

The one statement in the opinion of Judge Stephens in which I cannot concur is the last sentence in the next to the last paragraph which says: "Therefore, this opinion and decisions indicated are not to be taken as prejudicial to the further cooperation of United States officials and the trial court, through consent orders or otherwise, to prevent irreparable injury to users of water." Clearly the United States and the plaintiffs in the suit

mentioned are at liberty to cooperate by mutual consent as much as they please. But I cannot agree that they may do so "through consent orders" of the character of that now before us, for I think that the court is without power to participate in such an enterprise.

[Endorsed]: Opinion and Concurring Opinion. Filed Aug. 4, 1953. Paul P. O'Brien, Clerk. [1478]

United States District Court, Southern District of California, Northern Division

No. 685-ND Civil

EVERETT G. RANK, et al., Plaintiffs,

vs.

JULIUS A. KRUG, et al., Defendants.

ORDER GRANTING MOTION TO SUBSTITUTE PARTY

There having been filed in the above entitled Court on or about the 21st day of July, 1953, a Notice of, and Motion to substitute Clyde Spencer as a defendant both individually and as Supervising Engineer, California Projects, Bureau of Reclamation of the United States in all pleadings and all matters herein in place and instead of defendant Richard Boke individually and as Regional Director of the Bureau of Reclamation, California

Regional Director of the United States Bureau of Reclamation and/or Regional Director, Region 2, of the Bureau of Reclamation, and to amend the Complaint herein, and the matter after continuance in Open Court having come up regularly for hearing on the 17th day of August, 1953, and the Court having considered the Affidavits filed herein, the pleadings filed herein, and all other pleadings and matters in connection therewith, and having heard and considered arguments of counsel [1522] thereon:

And it appearing to the Court: that due, lawful and reasonable notice of said motion has been given to all counsel of record and to said Clyde Spencer personally and individually; that said Richard L. Boke resigned as California Regional Director, Region 2 of the Bureau of Reclamation of the United States, effective at the close of business June 30, 1953; that Clyde Spencer is the successor in office of said Richard L. Boke and was, on or about the 1st day of July, 1953, appointed "Supervising Engineer, California Projects, Bureau of Reclamation", with power to exercise all of the authority theretofore vested in the Regional Director and subordinate officials, Region 2, Bureau of Reclamation as evidenced by Order No. 2725 of the Department of the Interior of the United States, reading as follows:

"Department of the Interior
Office of the Secretary

(Order 2725)

"Supervising Engineer, California Projects, Bureau of Reclamation

"Delegation of Authority With Respect to Certain Functions and Exercise of Existing Authority by Subordinate Officials

June 25, 1953

"Section 1. Supervising Engineer. On and after July 1, 1953, the Supervising Engineer, California Projects, Bureau of Reclamation, may exercise all of the authority theretofore vested in the Regional Director and subordinate officials, Region 2, Bureau of Reclamation.

"Sec. 2. Subordinate officials. Subordinate officials of Region 2, Bureau of Reclamation will continue to exercise the authority theretofore vested in them until such time as the Supervising Engineer may withdraw such authority.

"Sec. 3. Redelegation. The Supervising Engineer may redelegate or authorize the [1523] redelegation of the authority vested in him by this order. (Sec. 2, Reorganization Plan No. 3 of 1950, 15 F. R. 3174)

DOUGLAS McKAY,
Secretary of the Interior.

(F. R. Doc. 53-5790; Filed, July 1, 1953; 8:45 a.m.)"

And it further appearing: that the motion for substitution was timely made; that there is substantial need for continuing and maintaining the within action; that by supplemental pleadings duly filed and from the affidavits on file herein Clyde Spencer adopts and continues, and threatens to adopt and continue, the action of his predecessor in office, viz.: Richard L. Boke in enforcing laws averred in the complaint and in amendments thereto to be in violation of the Constitution of the United States; that by supplemental pleadings duly filed and from the affidavits on file herein Clyde Spencer adopts and continues, and threatens to adopt and continue, the action of his predecessor in the impounding, taking, regulating, preventing the flow of, and alleged wasting of the waters of the San Joaquin River in the manner, methods and times which are averred by said complaint and its amendments to be in violation of the laws and statutes of the United States and in excess of the powers and duties of said Clyde Spencer as Supervising Engineer, California Projects, Bureau of Reclamation as prescribed, limited or permitted by such laws and statutes.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the motion to substitute Clyde Spencer as a defendant herein in place and instead of Richard L. Boke is hereby granted and said Clyde Spencer is hereby substituted as defendant, both individually and in his official capacity as Supervising Engineer, California Projects, Bureau of Reclamation of the United States, in place and

[1524] instead of Richard L. Boke, individually and as Regional Director, Region 2 of the Bureau of Reclamation of the United States, without prejudice to the proceedings already had in the within action, and that said Clyde Spencer appear and answer the complaint and amendments and supplements thereto in the within action within sixty (60) days after service on him of a copy of this order.

No motion for such substitution has been made as to the Complaint in Intervention of the City of Fresno and the Complaint in Intervention of the Tranquillity Irrigation District, and this Order does not apply thereto.

It Is Further Ordered, Adjudged and Decreed that the Motion to Amend the Complaint is hereby granted.

Dated at Los Angeles, California, this 26th day of August, 1953.

/s/ PEIRSON M. HALL,
United States District Judge.

[Endorsed]: Filed August 27, 1953.

[Title of District Court and Cause.]

ANSWER OF THE STATE OF CALIFORNIA TO COMPLAINT IN INTERVENTION OF THE CITY OF FRESNO

Comes now the alleged defendant, the State of California, expressly and fully reserving, and not waiving any defenses or objections which may be

available to said State, and particularly, but not exclusively, its immunity as a sovereign from suit, and answers the Complaint in Intervention of the City of Fresno, as it is required to do by the Order of this Court announced orally in open Court on August 17, 1953, and filed on August 27, 1953, and admits, denies and alleges as follows: [1528]

First Defense

The Complaint in Intervention fails to state a cause of action against the State of California, or any cause of action upon which relief can be granted.

Second Defense

The State of California, identified as a defendant in the summons served with this complaint, is not amenable to the jurisdiction of this court, in that the judicial power of the United States does not extend to actions, including actions by citizens and political subdivisions of the State, against the State in the absence of consent to said actions being provided for by the law of the State.

Third Defense

The appearance of the State, as a plaintiff in intervention, was not a waiver by the State of its sovereign immunity from suit; by such appearance the State did not consent to affirmative relief against it; in the absence of statutory authority neither the Attorney General nor any other administrative or executive officer of the State has power,

by appearing in any action, to waive the sovereign immunity of the State from being subjected to affirmative relief; and by so appearing the State did not and could not give this Court jurisdiction to entertain matters in the nature of counterclaims or cross-complaints against the State, or to grant any other form of affirmative relief against the State.

Fourth Defense

It affirmatively appears from the Complaint in Intervention, and from the record heretofore made in this cause, that the action is in fact and in law, an action against the United States of America, and seeks to affect its use of its property, i.e. Friant Dam and related works, and that [1529] the United States of America is an indispensable party hereto. The United States of America has not consented to the bringing of this suit and this Court is without jurisdiction on this further ground.

Fifth Defense

It affirmatively appears from the Complaint in Intervention, and from the record in this cause, that the complainant in intervention has a plain, adequate, and complete remedy at law, by reason of which this action cannot be maintained.

Sixth Defense

It affirmatively appears from the Complaint in Intervention, and from the record of this cause, that the complainant in intervention seeks by indirection to manage, operate, and control structures

owned by the United States of America, over which this court does not and cannot have jurisdiction.

Seventh Defense

There is no jurisdiction in this Court over the State of California in that no cause of action arising under the laws of the United States has been pleaded against the State; no diversity of citizenship has been alleged; the action is not a class action; and the proceeding in intervention is not ancillary to a proceeding over which this Court does have jurisdiction by virtue of having custody or control of property in which the State claims an interest. [1530]

Eighth Defense

It affirmatively appears from the Complaint in Intervention, that the complainant in intervention has failed to exhaust the administrative remedies available to it under the laws of the State of California, and in the absence of the exhaustion of such remedies this Court does not have jurisdiction over the State.

Ninth Defense

I.

Answering the allegations of paragraph I of the First Count of the Complaint in Intervention, the State admits that Martin Blote and Jack Rodner are employees of the Bureau of Reclamation of the United States Department of the Interior; that the area sometimes known as the San Joaquin Valley District includes the area in which Friant Dam,

Madera Canal, and Friant-Kern Canal are located; and that the defendants Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District, Delano-Earlimart Irrigation District, Lindsay-Strathmore Irrigation District, Lindmore Irrigation District, Ivanhoe Irrigation District, Saucelito Irrigation District, Orange Cove Irrigation District, Tulare Irrigation District, Lower Tule River Irrigation District, Stone Corral Irrigation District, Chowchilla Water District, Madera Irrigation District, and Southern San Joaquin Municipal Utility District are public corporations duly formed, organized, and existing under and by virtue of the laws of the State of California.

Further answering the allegations of said paragraph I, the State denies generally and specifically each and every material allegation of said paragraph I, and, to the contrary, alleges that the defendant employees of the [1531] United States of America neither have nor claim to have any right, power, or authority to do or perform any act touching or concerning the operation of the properties on which the plaintiff's cause of action is based, save and except to do, perform, and execute such lawful and authorized instructions as have or may hereafter be given them in carrying out the operation of the Central Valley Project, authorized by the Congress of the United States by the Acts of Congress approved June 17, 1902 (32 Stat. 388); April 8, 1935 (49 Stat. 115); June 22, 1936 (49 Stat. 1622); August 26, 1937 (50 Stat. 844); and acts amendatory thereof and supplementary thereto; and that all

of the acts and things done by the defendant employees of the United States or either of them in connection with said Central Valley Project, including those acts and things complained of, have been done and performed by them and each of them under and pursuant to the lawful authority and direction of the Secretary of the Interior of the United States of America and the Commissioner of the Bureau of Reclamation of the United States of America.

II.

Answering the allegations of paragraph II of the First Count of the Complaint in Intervention, the State admits that the City of Fresno is a municipal corporation organized and existing under and by virtue of the laws of the State of California with a population of approximately one hundred thousand (100,000) inhabitants; that the City of Fresno is located in Fresno County, California; that the City of Fresno now has approximately forty (40) water wells and pumps located within the boundaries of the City of Fresno which are presently pumping from the ground water underlying the City of Fresno. [1532]

Further answering the allegations of said paragraph II, the State denies generally and specifically each and every other material allegation of said paragraph II; and, to the contrary, alleges that the ground water underlying the City of Fresno is supplied, replenished, and supported at the present time, and at all material times in the past, by

sources of water other than the San Joaquin River; and that the State is informed and believes, and on such information and belief alleges that in the future none of the water underlying the City of Fresno would be supplied from the San Joaquin River ever if the San Joaquin River were allowed to flow uncontrolled by Friant Dam and its related works.

Further answering the allegations of said paragraph II, the State, further to the contrary, alleges that the construction and operation of the works proposed by the physical solution plan prepared by Charles H. Lee and dated December 15, 1951, said plan being referred to in said paragraph II, would cause waste of water, unreasonable use of water, unreasonable methods of use of water, and unreasonable methods of diversion of water contrary to the laws of the State of California prohibiting such waste, unreasonable use of water, unreasonable methods of use of water, and unreasonable methods of diversion of water; and that the imposition of said plan by injunction without the consent of the United States or its duly authorized officers would not be within this Court's judicial power.

III.

Answering the allegations of paragraph III of the First Count of the Complaint in Intervention, the State denies generally and specifically each and every material allegation of said paragraph III and, to the contrary, alleges that Friant Dam and

its related works were [1533] constructed and have been and are being operated pursuant to and in accordance with the acts of Congress referred to in paragraph I of this Defense.

Further answering said paragraph III, the State alleges that the City of Fresno has interests contrary to the named plaintiffs in the principal case and contrary to the class, if any, which said plaintiffs purport to represent.

IV.

Answering the allegations of paragraph IV of the First Count of the Complaint in Intervention, the State denies generally and specifically each and every material allegation of said paragraph IV.

V.

Answering the allegations of paragraph V of the First Count of the Complaint in Intervention, the State admits that a large portion of the flow of the San Joaquin River is being impounded, stored, and diverted by means of Friant Dam and its related works; and that a large portion of the water thus impounded, stored, and diverted is being used outside of the watershed of the San Joaquin River.

Further answering the allegations of said paragraph V, the State denies generally and specifically each and every other material allegation of said paragraph V and, to the contrary, alleges that Friant Dam and its related works were constructed pursuant to and in accordance with the acts of Congress referred to in paragraph I of this De-

fense; and that Friant Dam and its related works have been operated and are being operated pursuant to and in accordance with said acts of Congress and pursuant to and in accordance with the laws and statutes of the State of California.

Further answering the allegations of said paragraph V, the State, further to the contrary, alleges that the [1534] water of the San Joaquin River never has, at any time material to this cause of action, flowed in, under, or through land within the boundary of the City of Fresno.

VI.

Answering the allegations of paragraph VI of the First Count of the Complaint in Intervention, the State admits the material allegations of said paragraph VI.

Tenth Defense

I.

Answering the allegations of paragraph I of the Second Count of the Complaint in Intervention, the State admits, denies and alleges as in all of the allegations hereinabove made in the Ninth Defense to this cause of action and reaffirms said admissions, denials, and allegations the same as if they were fully set forth herein.

II.

Answering the allegations of paragraph II of the Second Count of the Complaint in Intervention, the State admits that the ground water underlying the

City of Fresno has been overpumped, i.e., more water has been pumped from the ground than has been supplied to the ground, for several years; but, this defendant is without knowledge or information sufficient to form a belief as to the exact quantities of water that have been overpumped or the exact period or periods of time during which said overpumping has occurred, and, if said quantities or times are material to this cause of action, demands strict and proper proof thereof.

Further answering the allegation of said paragraph II, the State admits that the City of Fresno has filed applications Nos. 6771, 6772, 7134 and 7135 for the appropriation of unappropriated water of the San Joaquin River on the dates alleged in and for the quantities alleged in [1535] said paragraph II; that applications Nos. 5637, 5638 and 9369 for the appropriation of unappropriated water were filed by the Director of Finance of the State of California on the dates alleged in and for the purposes alleged in said paragraph II; and that said applications Nos. 5637, 5638 and 9369 were assigned to the United States of America on the date alleged in said paragraph II.

Further answering the allegations of said paragraph II, the State denies generally and specifically each and every other material allegation of said paragraph II save and except that this defendant has no knowledge or information sufficient to form a belief as to the truth of the following allegation of said paragraph II:

"That based on a normal and customary past

increase in growth, population, area and business in the City of Fresno, the City of Fresno will by the year 2,000 need six (6) times the amount of water for its municipal purposes and for the domestic uses of its inhabitants than it is presently using",

and can neither admit nor deny the same but, if said allegation is material to this cause of action, demands strict and proper proof thereof.

Further answering the allegation of said paragraph II, the State alleges that the priority, if any, that the complainant in intervention might obtain by virtue of said applications Nos. 6771, 6772, 7134 and 7135 has not been perfected as required by the laws of the State; and further that at the time said applications to appropriate unappropriated water were filed there was little, if any, [1536] utilizable unappropriated water to which said applications could apply.

Eleventh Defense

It affirmatively appears from the Complaint in Intervention, and from the record in this cause, that a public use has and is attached to the waters impounded by, and utilizable because of, Friant Dam and its related works.

The complainant in intervention has been guilty of laches and unreasonable delay in bringing this action, since the construction of Friant Dam and its related works has been under way since 1938, and the purposes and method of operation of Friant Dam have been widely publicized; the com-

plainant in intervention knew of said construction and plans of operation, but failed to protest said construction or plans of operation; and the complainant in intervention failed to move to enter this cause of action until after the suit had been on file for more than four years. By reason either of the attachment of the public use or the laches and unreasonable delay of the complainant in intervention, or for both such reasons, the complainant in intervention has lost the right to the relief demanded.

Wherefore, these defendants pray:

1. That this Honorable Court dismiss the Complaint in Intervention:

(a) for want of jurisdiction over the State of California;

(b) for want of jurisdiction over the property of the State of California; [1537]

(c) for want of jurisdiction over the property of the United States of America;

(d) for want of jurisdiction over the United States of America; or

(e) for failure to state a cause of action against the State or any defendants.

2. That each of the prayers for relief of the complainant in intervention be denied by this Honorable Court.

3. That this Honorable Court award to this defendant its costs. [1538]

Dated: September 3, 1953.

/s/ EDMUND G. BROWN,
Attorney General,
/s/ B. ABBOTT GOLDBERG,
Deputy Attorney General.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed September 5, 1953.

[Title of District Court and Cause.]

ANSWER OF THE STATE OF CALIFORNIA TO COMPLAINT IN INTERVENTION OF THE TRANQUILLITY IRRIGATION DISTRICT

Comes now the alleged defendant, the State of California, expressly and fully reserving, and not waiving any defenses or objections which may be available to said State, and particularly, but not exclusively, its immunity as a sovereign from suit, and answers the Complaint in Intervention of the Tranquillity Irrigation District as it is required to do by the Order of this Court announced orally in open Court on August 17, 1953, and filed on August 27, 1953, and admits, denies and alleges as follows: [1541]

First Defense

The Complaint in Intervention fails to state a cause of action against the State of California, or any cause of action upon which relief can be granted.

Second Defense

The State of California, identified as a defendant in the summons served with this complaint, is not amenable to the jurisdiction of this court, in that the judicial power of the United States does not extend to actions, including actions by citizens and political subdivisions of the State, against the State in the absence of consent to said actions being provided for by the law of the State.

Third Defense

The appearance of the State, as a plaintiff in intervention, was not a waiver by the State of its sovereign immunity from suit; by such appearance the State did not consent to affirmative relief against it; in the absence of statutory authority neither the Attorney General nor any other administrative or execution officer of the State has power, by appearing in any action, to waive the sovereign immunity of the State from being subjected to affirmative relief; and by so appearing the State did not and could not give this Court jurisdiction to entertain matters in the nature of counterclaims or cross-complaints against the State, or to grant any other form of affirmative relief against the State.

Fourth Defense

It affirmatively appears from the Complaint in Intervention, and from the record heretofore made in this cause, that the action is in fact and in law, an action against the United States of America,

and seeks to affect its use of its property, i.e. Friant Dam and related works, and that [1542] the United States of America is an indispensable party hereto. The United States of America has not consented to the bringing of this suit and this Court is without jurisdiction on this further ground.

Fifth Defense

It affirmatively appears from the Complaint in Intervention, and from the record in this cause, that the complainant in intervention has a plain, adequate, and complete remedy at law, by reason of which this action cannot be maintained.

Sixth Defense

It affirmatively appears from the Complaint in Intervention, and from the record of this cause, that the complainant in intervention seeks by indirection to manage, operate, and control structures owned by the United States of America, over which this court does not and cannot have jurisdiction.

Seventh Defense

There is no jurisdiction in this Court over the State of California in that no cause of action arising under the laws of the United States has been pleaded against the State; no diversity of citizenship has been alleged; the action is not a class action; and the proceeding in intervention is not ancillary to a proceeding over which this Court does have jurisdiction by virtue of having custody or control of property in which the State claims an interest. [1543]

Eighth Defense

I.

Answering the allegations of paragraph I of the First Count of the Complaint in Intervention, the State admits that Martin Blote and Jack Rodner are employees of the Bureau of Reclamation of the United States Department of the Interior; that the area sometimes known as the San Joaquin Valley District includes the area in which Friant Dam, Madera Canal, and Friant-Kern Canal are located; and that the defendants Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District, Delano-Earlimart Irrigation District, Lindsay-Strathmore Irrigation District, Lindmore Irrigation District, Ivanhoe Irrigation District, Saucelito Irrigation District, Orange Cove Irrigation District, Tulare Irrigation District, Lower Tule River Irrigation District, Stone Corral Irrigation District, Chowchilla Water District, Madera Irrigation District, and Southern San Joaquin Municipal Utility District are public corporations duly formed, organized, and existing under and by virtue of the laws of the State of California.

Further answering the allegations of said paragraph I, the State denies generally and specifically each and every material allegation of said paragraph I, and, to the contrary, alleges that the defendant employees of the United States of America neither have nor claim to have any right, power, or authority to do or perform any act touching or concerning the operation of the properties on which

the plaintiff's cause of action is based, save and except to do, perform, and execute such lawful and authorized instructions as have or may hereafter be given them in carrying out the operation of the Central Valley Project, [1544] authorized by the Congress of the United States by the Acts of Congress approved June 17, 1902 (32 Stat. 388); April 8, 1935 (49 Stat. 115); June 22, 1936 (49 Stat. 1622); August 26, 1937 (50 Stat. 844); and acts amendatory thereof and supplementary thereto; and that all of the acts and things done by the defendant employees of the United States or either of them in connection with said Central Valley Project, including those acts and things complained of, have been done and performed by them and each of them under and pursuant to the lawful authority and direction of the Secretary of the Interior of the United States of America and the Commissioner of the Bureau of Reclamation of the United States of America.

II.

Answering the allegations of paragraph II of the First Count of the Complaint in Intervention, the State admits that the Tranquillity Irrigation District is a public corporation formed, organized, and existing under and by virtue of the laws of the State of California for more than thirty (30) years last past, and is located in Fresno County; that said Tranquillity Irrigation District now has approximately eleven (11) water wells and pumps located within the boundaries of said District; that

in addition to said eleven (11) water wells and pumps there are also other wells and pumps located within the boundaries of said District; and that said wells and pumps are presently pumping from the ground water underlying said Tranquillity Irrigation District.

Further answering the allegations of said paragraph II, this defendant denies generally and specifically each and every other material allegation of said paragraph II; and, to the contrary, alleges that the useable ground [1545] water underlying the Tranquillity Irrigation District is supplied, replenished, and supported at the present time, and at all material times in the past, by sources of water other than the San Joaquin River; and that this defendant is informed and believes, and on such information and belief, this defendant further alleges that in the future none of the useable water underlying the Tranquillity Irrigation District would be supplied from the San Joaquin River even if the San Joaquin River were allowed to flow uncontrolled by Friant Dam and its related works.

Further answering the allegations of said paragraph II, the State, further to the contrary, alleges that the construction and operation of the works proposed by the physical solution plan prepared by Charles H. Lee and dated December 15, 1951, said plan being referred to in said paragraph II, would cause waste of water, unreasonable use of water, unreasonable methods of use of water, and unreasonable methods of diversion of water contrary to the laws of the State of California pro-

hibiting such waste, unreasonable use of water, unreasonable methods of use of water, and unreasonable methods of diversion of water; and that the imposition of said plan by injunction without the consent of the United States or its duly authorized officers would not be within this Court's judicial power.

Further answering the allegations of said paragraph II, this defendant has no knowledge or information sufficient to form a belief as to the riparian status of the land owned by the complainants in intervention and can neither admit nor deny such status, but if such status is material to this cause of action, this defendant demands strict and proper proof thereof. [1546]

III.

Answering the allegations of paragraph III of the First Count of the Complaint in Intervention, this defendant admits that a large portion of the flow of the San Joaquin River is being impounded, stored, and diverted by means of Friant Dam and its related works; and that a large portion of the water thus impounded, stored, and diverted is being used outside of the watershed of the San Joaquin River.

Further answering the allegations of said paragraph III, this defendant denies generally and specifically each and every other material allegation of said paragraph III and, to the contrary, alleges that Friant Dam and its related works were constructed and have been and are being operated

pursuant to and in accordance with the acts of Congress referred to in paragraph I of this Eighth Defense.

IV.

Answering the allegations of paragraph IV of the First Count of the Complaint in Intervention, this defendant denies generally and specifically each and every material allegation of said paragraph IV.

V.

Answering the allegations of paragraph V of the First Count of the Complaint in Intervention, this defendant denies generally and specifically each and every material allegation of said paragraph V and, to the contrary, alleges that Friant [1547] Dam and its related works were constructed pursuant to and in accordance with the acts of Congress referred to in paragraph I of this Eighth Defense; and that Friant Dam and its related works have been operated and are being operated, pursuant to and in accordance with said acts of Congress and pursuant to and in accordance with the laws and statutes of the State of California.

VI.

Answering the allegations of paragraph VI of the First Count of the Complaint in Intervention, this defendant admits the material allegations of said paragraph VI.

VII.

Answering the allegations of paragraph VII of the First Count of the Complaint in Intervention,

this defendant admits that Fresno Slough receives a portion of its water from the San Joaquin River during certain stages of flow in the San Joaquin River, and that Fresno Slough is located in Fresno County.

Further answering the allegations of said paragraph VII, this defendant denies that Fresno Slough is supplied practically entirely by water flowing from the San Joaquin River, and, if the quantity of water that is supplied to Fresno Slough from the San Joaquin River is material to this cause of action, this defendant demands strict and proper proof thereof.

Further answering the allegations of said paragraph VII, this defendant denies generally and specifically each and every other material allegation of said paragraph VII except that this defendant admits that by virtue of a judgment entered by the Superior Court of the State of California in and for the County of Madera in case No. 3094, captioned Miller and Lux, Inc. v. San Joaquin Valley Farm Lands Company, [1548] and by virtue of a judgment entered by the Superior Court of the State of California in and for the County of Madera in case No. 3095, captioned Miller and Lux Inc. v. Tranquillity Irrigation District, certain of the landowners owning riparian land in the Tranquillity Irrigation District were entitled, as against the plaintiff in those said actions (Miller and Lux, Inc.) to twelve per cent (12%) of the flows in excess of 1360 cubic feet of water per second naturally flowing in the San Joaquin River at a point

on said river where Fresno Slough enters said river to the extent that said quantities could be reasonably and beneficially used by said landowners on their then riparian land. This defendant lacks information and belief as to the extent that said quantities of water could be reasonably and beneficially used on the alleged riparian lands and can make no allegation concerning the reasonable and beneficial use of said quantities, but if the reasonable and beneficial use of said quantities is material to this cause of action this defendant demands strict and proper proof thereof.

VIII.

Answering the allegations of paragraph VIII of the First Count of the Complaint in Intervention, this defendant denies generally and specifically each and every material allegation of said paragraph VIII; and this defendant alleges that the complainants in intervention have interests contrary to the named plaintiffs in the principal case and contrary to the class, if any, which said plaintiffs represent.

Ninth Defense

I.

Answering the allegations of paragraph I of the Second Count of the Complaint in Intervention, this defendant is without knowledge or information sufficient to form a belief [1549] as to the status as Directors of the Tranquillity Irrigation District of Raymond Costales, William E. Clotz, and N. D.

Hughes, or the status as Secretary of said District of Iva Johnson, or the status as Manager of said District of Frank Miller, or the status as landowners in said District of Raymond Costales, William E. Clotz, N. D. Hughes, Iva Johnson, and Frank Miller, but if said statuses are material to this cause of action, this defendant demands strict and proper proof thereof.

Further answering the allegations of said paragraph I, this defendant denies generally and specifically each and every other material allegation of said paragraph I, save and except that this defendant admits that certain owners of riparian land in said Tranquillity Irrigation District had certain rights to flows of water originating in the San Joaquin River as set forth in paragraph VII of the Eighth Defense of this answer.

Further answering the allegations of said paragraph I, this defendant has no knowledge or information sufficient to form a belief as to the riparian status of the land owned by the complainants in intervention and can neither admit nor deny such status, but if such status is material to this cause of action, this defendant demands strict and proper proof thereof.

II.

Answering the allegations of paragraph II of the Second Count of the Complaint in Intervention, this defendant denies generally and specifically each and every material allegation of said paragraph II, save and except that this defendant ad-

mits that certain owners of riparian land in said Tranquillity Irrigation District had rights to flows of water originating in the San Joaquin River as set forth above in paragraph VII [1550] of the Eighth Defense of this answer. This defendant lacks information and belief as to the extent that said quantities of water could be reasonably and beneficially used on the alleged riparian lands and can make no allegation concerning the reasonable and beneficial use of said quantities, but if the reasonable and beneficial use of said quantities is material to this cause of action this defendant demands strict and proper proof thereof.

III.

Answering the allegations of paragraph III of the Second Count of the Complaint in Intervention, this defendant denies generally and specifically each and every material allegation of said paragraph III, and, to the contrary is informed and believes and therefore alleges that the United States, through the Bureau of Reclamation, has in good faith negotiated with and attempted to reach an agreement with the Tranquillity Irrigation District concerning the quantities of water which have been taken or interfered with by the United States that the owners of land in said District are entitled to receive from the San Joaquin River and that the United States has offered to furnish a substitute supply of water for such quantities. This defendant is informed and believes and therefore alleges that the United States is still willing to continue such negotiations.

Tenth Defense

It affirmatively appears from the Complaint in Intervention, and from the record in this cause, that a public use has and is attached to the waters impounded by, and utilizable because of, Friant Dam and its related works.

The complainant in intervention has been guilty of laches and unreasonable delay in bringing this action, since the construction of Friant Dam and its related works has [1551] been under way since 1938, and the purposes and method of operation of Friant Dam have been widely publicized; the complainant in intervention knew of said construction and said plans of operation, but failed to protest said construction or plans of operation; and the complainant in intervention failed to move to enter this cause of action until after the suit had been on file for more than four years. By reason either of the attachment of the public use or the laches and unreasonable delay of the complainant in intervention, or for both such reasons, the complainant in intervention has lost the right to the relief demanded.

Wherefore, these defendants pray:

1. That this Honorable Court dismiss the Complaint in Intervention:

(a) for want of jurisdiction over the State of California;

(b) for want of jurisdiction over the property of the State of California;

(c) for want of jurisdiction over the property of the United States of America;

(d) for want of jurisdiction over the United States of America; or

(e) for failure to state a cause of action against the State or any defendants. [1552]

2. That each of the prayers for relief of the complainant in intervention be denied by this Honorable Court.

3. That this Honorable Court award to this defendant its costs.

Dated: September 3, 1953.

/s/ EDMUND G. BROWN,
Attorney General,
/s/ B. ABBOTT GOLDBERG,
Deputy Attorney General,
Attorneys for Defendant
State of California. [1553]

Affidavit of Service by Mail Attached.

[Endorsed]: Filed September 8, 1953.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT IN INTERVENTION OF THE CITY OF FRESNO

Come now the defendants Lindsay-Strathmore Irrigation District, Lindmore Irrigation District, Ivanhoe Irrigation District, Saucelito Irrigation District, Orange Cove Irrigation District, Tulare Irrigation District, Lower Tule River Irrigation Distict, Stone Corral Irrigation District, Terra

Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District and Delano-Earlimart Irrigation District, and answering the complaint in intervention of the City of Fresno, admit, deny and allege as follows, to-wit: [1557]

I.

Deny generally and specifically, each and every, allegation contained in paragraph II of the said complaint in intervention, except that these defendants admit that the City of Fresno, is a municipal corporation, organized and existing under and by virtue of the laws of the State of California, with a population of approximately 100,000 inhabitants, and is located in Fresno County, California, within the watershed of the San Joaquin River, with boundaries as shown in the map attached to the complaint in intervention and marked Exhibit "A"; that the said City of Fresno now has forty or more water wells and pumps located within the boundaries of said city and is presently pumping from the underground water strata, percolating waters and subterranean streams underlying the said City of Fresno.

II.

Deny generally and specifically, each and every, allegation contained in Paragraph III of said complaint in intervention, except that these defendants admit that said defendants, Richard Boke and Jack Rodner, were at the time of the filing of said complaint in intervention engaged in operating a dam across the San Joaquin River near Friant, Cali-

fornia, known as Friant Dam, which is a part of the Central Valley Project of the United States, under the direction and control of the Bureau of Reclamation, together with the concrete abutments, levees, drum gates, and diversion works appurtenant thereto, and the concrete canals known as Friant-Kern Canal and Madera Canal, by means of which the said defendants have for a long time impounded in seasons of high water so much of the water of the San Joaquin River as can be safely impounded by means of said Dam, except for such of the capacity of said Dam as may be necessary to provide protection of the lower lands from flooding, and has stored the said water to the dry season and diverted a large part of the same for irrigation of [1558] lands which are not riparian to the San Joaquin River; that these defendants deny that practically all of the water of said River has been, or will be, so diverted or transported, but has no information or belief sufficient to enable it to determine what portion of the said water has been, or will be, so diverted and transported, and basing their denial upon such want of information or belief, deny that said defendants, or any of them, have diverted, or will divert, from the San Joaquin River any water which is now needed, or will be required, for reasonable prospective uses in or under the lands of plaintiff in intervention; defendants allege that all of the acts of the defendants hereinabove admitted have been done by the defendants, Richard Boke, Martin Blote, and Jack Rodner, in their capacities as officers of the Bureau of Reclamation of the

Department of Interior of the United States, in pursuance of the Acts of Congress authorizing the construction and operation of the Central Valley Project by the Bureau of Reclamation; that said acts of defendants are part and parcel of the Central Valley Project, as authorized and directed by said Acts of Congress.

III.

Deny generally and specifically, each and every, allegation contained in Paragraph IV of said complaint in intervention.

IV.

Deny generally and specifically, each and every, allegation contained in Paragraph V of said complaint in intervention.

Answering the second cause of action contained in said complaint, defendants admit, deny, and allege as follows, to-wit:

I.

Incorporate by reference the entire answer to the first cause of action. [1559]

II.

These answering defendants admit that the Department of Finance of the State of California filed applications for appropriation of the water of the San Joaquin River, as alleged in the complaint in intervention, and assigned the rights of the State thereunder to the United States, and allege that said applications are now pending before the D. i-

sion of Water Resources of the Department of Public Works, and except for the facts so admitted and alleged, defendants have no information or belief sufficient to enable them to answer the allegations of paragraph .II of the second cause of action of said complaint in intervention, and basing their denial upon such want of information or belief, deny generally and specifically, each and every, allegation of said paragraph, except as herein admitted.

As a Second and Further Answer and Defense, These Defendants Allege:

I.

That the Central Valley Project was constructed and is now operated by the United States, pursuant to divers Acts of Congress, including those mentioned in the complaint in intervention, and by means of appropriations from the Treasury of the United States for the purpose of providing for the general welfare; that construction of said Project was commenced by the United States during the year 1935 or thereabouts, and was completed in the year 1945 or thereabouts; that the said Project was defined and described in an Act of the Legislature of the State of California, enacted at the Session of 1933, which said Act was subsequently approved by the electors at a referendum, and the said Project was constructed by the United States in substantial conformity with the description contained in the said Act; that the Friant Dam, Madera Canal, and

Friant-Kern Canal were essential parts of [1560] the said Project, as defined by the said Act of the Legislature of California, and adopted and authorized by the Congress of the United States; that at all times from the enactment of the said Act of the Legislature of California to the filing of the complaint in intervention herein, the nature of the said works and their intended uses were matters of general notoriety in the City of Fresno and its vicinity, and were well-known to the City of Fresno and to all the officers of said municipality; that during the said time the said intervenor made no effort to prevent the construction of said Dam and Canals or the diversion of water by means thereof, or to construct any works for the diversion of water from the San Joaquin River pursuant to any applications filed by said intervenor with the Division of Water Resources of the Department of Public Works, but at all times acquiesced in the construction of said Central Valley Project and the expenditures from the Treasury of the United States for the same; that all of the water which has been, or is now, diverted by means of said Dam and Canals, has been and is necessary for the irrigation of the lands served by said Canals; that any injunction or physical solution which will preserve the rights of intervenor, if any, in the water of the said River will result in irreparable injury to the United States and to the Irrigation Districts and the owners of lands served by said Project; that intervenor is now remitted to its remedy of recovery of compensation for the taking of its property for public use under the

Fourth Amendment to the Constitution of the United States.

As a Third and Further Answer and Defense, These Defendants Allege:

I.

That each of these defendants has a contract with the United States for the delivery of water from the Friant-Kern [1561] Canal for the irrigation of the lands within the District; that the relief demanded by intervenor herein will, if granted, necessarily diminish the quantity of water which can be delivered to these defendants by the United States and render the same insufficient for the irrigation of the lands within the District.

II.

That the Kings River emerges from the Sierra Nevada Mountains at a distance approximately twenty (20) miles in an easterly direction from the City of Fresno, and flows thence in a southerly direction, and then in a southeasterly direction to Tulare Lake and the Fresno Slough; that for the greater part of its said course the said River flows within a distance of twenty-five (25) miles or thereabouts from the City of Fresno; that from time immemorial the underground and percolating waters in that portion of the County of Fresno east of the said Fresno Slough have been supplied and fed by the waters of the Kings River and the Fresno Slough; that since the introduction of irrigated

farming in said area, said underground and percolating waters have been supplied and fed by seepage and percolation from irrigation by means of water diverted from the Kings River as well as by direct seepage and percolation from said River; that from time immemorial the underground and percolating waters in the said area have drained into the San Joaquin River and increased the flow thereof.

III.

That for a long time prior to the commencement of this action and the filing of the complaint in intervention, the City of Fresno and farmers in Fresno County have been pumping water for domestic use and irrigation; that the said pumping has so depleted the underground and percolating waters which would otherwise have drained into the San Joaquin River that the flow of said River has been greatly diminished, and large quantities of water have [1562] percolated from the said River into the south bank thereof and the soil adjacent thereto; that such diminution of the flow of said River will continue so long as the intervenor continues to pump water from the soil; that by reason of such diminution of the flow of said River, the flow thereof has been, and will be, reduced below the quantity to which the owners of lower lands having rights prior to that of the United States are entitled, and the United States will be compelled to release water to satisfy the requirements of the holders of such rights; that by reason thereof the United States and the defendant Irrigation Dis-

tricts will suffer irreparable injury for which they have no adequate remedy at law.

IV.

That the intervenor owns no land riparian to the San Joaquin River and has never acquired any right by appropriation or otherwise to divert said underground and percolating waters by pumping for domestic use of the inhabitants of the City of Fresno.

As a Fourth and Further Answer and Defense, These Defendants Allege:

I.

That complainant in intervention has at all times mentioned in said complaint in intervention had, and now has, a plain, speedy and adequate administrative remedy under the law of the State of California, with reference to any alleged rights under any appropriations or attempt to appropriate any waters of the San Joaquin River, and that said complainant in intervention has wholly and entirely failed and refused to pursue or exhaust said administrative remedy, and that this Court is without jurisdiction to proceed in the premises.

As a Fifth and Further Answer and Defense, These Defendants [1563] Allege:

I.

That said complaint in intervention fails to state a cause of action against these defendants, or either of them, upon which any relief can be granted.

As a Sixth and Further Answer and Defense, These Defendants Allege:

I.

That it affirmatively appears from the complaint in intervention and from the record heretofore made in this cause, that the above entitled action is, in fact and in law, an action against the United States of America, and seeks to affect its use of its property, and that the United States of America is an indispensable party hereto; that the United States of America has not consented to the bringing of this action, and that this Court was and is and at all times since the commencement of this action has been, entirely without jurisdiction in the premises.

As a Seventh and Further Answer and Defense, These Defendants Allege:

I.

That no Federal question is presented by this action, that there is no diversity of citizenship of the parties to this action, that the United States is not a party to this action, and that the above entitled Court is without jurisdiction over these defendants or over the subject matter of this action: that these defendants have not consented and do not now consent to be sued herein.

As an Eighth and Further Answer and Defense, These Defendants Allege: [1564]

I.

That is affirmatively appears from the complaint in intervention and from the record in this case that the complainant in intervention has a plain, adequate, and complete remedy at law, by reason of which this action cannot be maintained.

As a Ninth and Further Answer and Defense, These Defendants Allege:

I.

That it affirmatively appears from the complaint in intervention and from the record of this cause, that the complainant in intervention seeks by indirection to manage, operate, and control property of the United States of America, over which this Court does not and cannot have jurisdiction.

As a Tenth and Further Answer and Defense, These Defendants Allege:

I.

That complainant in intervention has been guilty of laches and unreasonable delay in bringing this action, since the construction of Friant Dam and its related works has been underway since 1938, the purposes and method of operation of Friant Dam have ben widely publicized the complainant in intervention knew of said construction and said plans of operation but failed to protest said construction or plants of operation, and the complainant in in-

tervention failed to move to enter this cause of action until after the suit had been on file for more than four years.

As an Eleventh and Further Answer and Defense, These Defendants Allege:

I.

That it affirmatively appears from the complaint in intervention, [1565] and from the record in this cause, that a public use in favor of the United States has and is attached to the subject matter of this action and by reason of which this action cannot be maintained.

As a Twelfth and Further Answer and Defense, These Defendants Allege:

I.

That these defendants allege that the State of California, through the legislative and administrative branches of its government, has conferred upon the United States rights to appropriate unappropriated water of the San Joaquin River by means of Friant Dam and its related works for use in the operation of the Central Valley Project; that relying on these rights the United States has expended a large amount of money for the construction of the works of the Central Valley Project including Friant Dam and its related works; that by means of these works the United States has made and is making beneficial use and thus has appropriated water of the San Joaquin River, and that these rights of the United States are superior to the

rights of the complainant, if any, to appropriate unappropriated water of the San Joaquin River.

Wherefore these defendants pray:

1. That this Honorable Court dismiss this complaint in intervention:

(a) For want of jurisdiction over these defendants;

(b) For want of jurisdiction over the property of these defendants;

(c) For want of jurisdiction over the property of the United States of America;

(d) For want of jurisdiction over the United States of America; [1566]

(e) For failure to state a cause of action against any of these defendants.

2. That each of the prayers for relief of the complainants in intervention be denied by this Honorable Court.

3. That this Honorable Court award to these defendants their costs.

MADDOX & ABERCROMBIE,
and ERLING H. KLOSTER,
/s/ By EDWARD ABERCROMBIE,
On Behalf of These Answering Defendants and Their Co-counsel, Above Named.

Duly Verified.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed September 10, 1953.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT IN INTERVENTION OF THE TRANQUILLITY IRRIGATION DISTRICT

Come now the defendants Lindsay-Strathmore Irrigation District, Lindmore Irrigation District, Ivanhoe Irrigation District, Saucelito Irrigation District, Orange Cove Irrigation District, Tulare Irrigation District, Lower Tule River Irrigation District, Stone Corral Irrigation District, Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District and Delano-Earlimart Irrigation District, and answering the complaint in intervention of the Tranquillity Irrigation District, admit, deny and allege as follows, to wit: [1572]

First Defense

Answering the allegations of the first count set forth in said complaint in intervention:

I.

These defendants admit that Martin Blote and Jack Rodner are employees of the Bureau of Reclamation of the United States Department of the Interior; that the area sometimes known as the San Joaquin Valley District includes the area in which Friant Dam, Madera Canal, and Friant-Kern Canal are located; and that the defendants Terra Bella Irrigation District, Porterville Irrigation District,

Exeter Irrigation District, Delano-Earlimart Irrigation District, Lindsay-Strathmore Irrigation District, Lindmore Irrigation District, Ivanhoe Irrigation District, Saucelito Irrigation District, Orange Cove Irrigation District, Tulare Irrigation District, Lower Tule River Irrigation District, Stone Corral Irrigation District, Chowchilla Water District, Madera Irrigation District, and Southern San Joaquin Municipal Utility District are public corporations duly formed, organized, and existing under and by virtue of the laws of the State of California.

Further answering the allegations of said paragraph 1, these defendants deny generally and specifically each and every material allegation of said paragraph I, and, to the contrary, allege that the defendant employees of the United States of America neither have nor claim to have any right, power, or authority to do or perform any act touching or concerning the operation of the properties on which the plaintiff's cause of action is based, save and except to do, perform, and execute such lawful and authorized instructions as have or may hereafter be given them in carrying out the operation of the Central Valley Project, authorized by the Congress of the United States by the Acts of Congress approved June 17, 1902 (32 Stat. 388); April 8, 1935 (49 Stat. 115); June 22, 1936 (49 Stat. 1622); August 26, 1937 [1573] (50 Stat. 844); and acts amendatory thereof and supplementary thereto; and that all of the acts and things done by the defendant employees of the United States or either of them in connection with said Central Valley Proj-

ect, including those acts and things complained of, have ben done and performed by them and each of them under and pursuant to the lawful authority and direction of the Secretary of the Interior of the United States of America and the Commissioner of the Bureau of Reclamation of the United States of America.

II.

Answering the allegations of paragraph II of the First Count of the Complaint in Intervention, these defendants admit that the Tranquillity Irrigation District is a public corporation formed, organized, and existing under and by virtue of the laws of the State of California for more than thirty (30) years last past, and is located in Fresno County; that said Tranquillity Irrigation District now has approximately eleven (11) water wells and pumps located within the boundaries of said District; that in addition to said eleven (11) water wells and pumps there are also other wells and pumps located within the boundaries of said District; and that said wells and pumps are presently pumping from the ground water underlying said Tranquillity Irrigation District.

Further answering the allegations of said paragraph II, these defendants deny generally and specifically each and every other material allegation of said paragraph II; and, to the contrary, allege that the useable ground water underlying the Tranquillity Irrigation District is supplied, replenished, and supported at the present time, and at all material times in the past, by sources of water other than

the San Joaquin River; and that these defendants are informed and believe, and on such information and belief, these defendants further allege that in the future none of the useable water underlying the Tranquillity [1574] Irrigation District would be supplied from the San Joaquin River even if the San Joaquin River were allowed to flow uncontrolled by Friant Dam and its related works.

Further answering the allegations of said paragraph II, these defendants, further to the contrary, allege that the construction and operation of the works proposed by the physical solution plan prepared by Charles H. Lee and dated December 15, 1951, said plan being referred to in said paragraph II, would cause waste of water, unreasonable use of water, unreasonable methods of use of water, and unreasonable methods of diversion of water contrary to the laws of the State of California prohibiting such waste, unreasonable use of water, unreasonable methods of use of water, and unreasonable methods of diversion of water; and that the imposition of said plan by injunction without the consent of the United States or its duly authorized officers would not be within this Court's judicial power.

Further answering the allegations of said paragraph II, these defendants have no knowledge or information sufficient to form a belief as to the riparian status of the land owned by the complainant in intervention and can neither admit nor deny such status, but if such status is material to this cause of action, these defendants demand strict and proper proof thereof.

III.

Answering the allegations of paragraph III of the First Count of the Complaint in Intervention, these defendants admit that a large portion of the flow of the San Joaquin River is being impounded, stored, and diverted by means of Friant Dam and its related works; and that a large portion of the water thus impounded, stored, and diverted is being used outside of the watershed of the San Joaquin River.

Further answering the allegations of said paragraph III, these defendants deny generally and specifically each and every [1575] other material allegation of said paragraph III and, to the contrary, allege that Friant Dam and its related works were constructed and have been and are being operated pursuant to and in accordance with the acts of Congress referred to in paragraph I of this First Defense.

IV.

Answering the allegations of paragraph IV of the First Count of the Complaint in Intervention, these defendants deny generally and specifically each and every material allegation of said paragraph IV.

V.

Answering the allegations of paragraph V of the First Count of the Complaint in Intervention these defendants deny generally and specifically each and every material allegation of said paragraph V and,

to the contrary, allege that Friant Dam and its related works were constructed pursuant to and in accordance with the acts of Congress referred to in paragraph I of this First Defense; and that Friant Dam and its related works have been operated and are being operated pursuant to and in accordance with said acts of Congress and pursuant to and in accordance with the laws and statutes of the State of California.

VI.

Answering the allegations of paragraph VI of the First Count of the Complaint in Intervention, these defendants admit the material allegations of said paragraph VI.

VII.

Answering the allegations of paragraph VII of the First Count of the Complaint in Intervention, these defendants admit that Fresno Slough receives a portion of its water from the San Joaquin River during certain stages of flow in the San Joaquin River, and that Fresno Slough is located in Fresno County.

Further answering the allegations of said paragraph VII, [1576] these defendants deny that Fresno Slough is supplied practically entirely by water flowing from the San Joaquin River, and; if the quantity of water that is supplied to Fresno Slough from the San Joaquin River is material to this cause of action, these defendants demand strict and proper proof thereof.

Further answering the allegations of said paragraph VII, these defendants deny generally and specifically each and every other material allegation of said paragraph VII except that these defendants admit that by virtue of a judgment entered by the Superior Court of the State of California in and for the County of Madera in case No. 3094, captioned Miller and Lux, Inc. v. San Joaquin Valley Farm Lands Company, and by virtue of a judgment entered by the Superior Court of the State of California in and for the County of Madera in case No. 3095, captioned Miller and Lux Inc. v. Tranquillity Irrigation District, certain of the landowners owning riparian land in the Tranquillity Irrigation District were entitled, as against the plaintiff in those said actions (Miller and Lux, Inc.) to twelve per cent (12%) of the flows in excess of 1360 cubic feet of water per second naturally flowing in the San Joaquin River at a point on said river where Fresno Slough enters said river to the extent that said quantities could be reasonably and beneficially used by said landowners on their then riparian land. These defendants lack information and belief as to the extent that said quantities of water could be reasonably and beneficially used on the alleged riparian lands and can make no allegation concerning the reasonable and beneficial use of said quantities, but if the reasonable and beneficial use of said quantities is material to this cause of action these defendants demand strict and proper proof thereof.

VIII.

Answering the allegations of paragraph VIII of the First Count of the Complaint in Intervention, these defendants deny [1577] generally and specifically each and every material allegation of said paragraph VIII; and these defendants allege that the complainants in intervention have interests contrary to the named plaintiffs in the principal case and contrary to the class, if any, which said plaintiffs represent.

Second Defense

I.

Answering the allegations of paragraph I of the Second Count of the Complaint in Intervention, these defendants are without knowledge or information sufficient to form a belief as to the status as Directors of the Tranquillity Irrigation District of Raymond Costales, William E. Clotz, and N. D. Hughes, or the status as Secretary of said District of Iva Johnson, or the status as Manager of said District of Frank Miller, or the status as Landowners in said District of Raymond Costales, William E. Clotz, N. D. Hughes, Iva Johnson, and Frank Miller, but if said statuses are material to this cause of action, these defendants demand strict and proper proof thereof.

Further answering the allegations of said paragraph I, these defendants deny generally and specifically each and every other material allegation of said paragraph I, save and except that these defendants admit that certain owners of riparian land

in said Tranquillity Irrigation District had certain rights to flows of water originating in the San Joaquin River as set forth in paragraph VII of the First Defense of this answer.

Further answering the allegations of said paragraph I, these defendants have no knowledge or information sufficient to form a belief as to the riparian status of the land owned by the complainants in intervention and can neither admit nor deny such status, but if such status is material to this cause of action, these defendants demand strict and proper proof thereof. [1578]

II.

Answering the allegations of paragraph II of the Second Count of the Complaint in Intervention, these defendants deny generally and specifically each and every material allegation of said paragraph II, save and except that these defendants admit that certain owners of riparian land in said Tranquillity Irrigation District had rights to flows of water originating in the San Joaquin River as set forth above in paragraph VII of the First Defense of this answer. These defendants lack information and belief as to the extent that said quantities of water could be reasonably and beneficially used on the alleged riparian lands and can make no allegation concerning the reasonable and beneficial use of said quantities, but if the reasonable and beneficial use of said quantities is material to this cause of action these defendants demand strict and proper proof thereof.

III.

Answering the allegations of paragraph III of the Second Count of the Complaint in Intervention, these defendants deny generally and specifically each and every material allegation of said paragraph III, and, to the contrary are informed and believe and therefore allege that the United States, through the Bureau of Reclamation, has in good faith negotiated with and attempted to reach an agreement with the Tranquillity Irrigation District concerning the quantities of water which have been taken or interfered with by the United States that the owners of land in said District are entitled to receive from the San Joaquin River and that the United States has offered to furnish a substitute supply of water for such quantities. These defendants are informed and believe and therefore allege that the United States is still willing to continue such negotiations. [1579]

Third Defense

I.

That the Central Valley Project was constructed and is now operated by the United States, pursuant to divers Acts of Congress, including those mentioned in the complaint in intervention, and by means of appropriations from the Treasury of the United States for the purpose of providing for the general welfare; that construction of said Project was commenced by the United States during the year 1935 or thereabouts, and was completed in the

year 1945 or thereabouts; that the said Project was defined and described in an Act of the Legislature of the State of California, enacted at the Session of 1933, which said Act was subsequently approved by the electors at a referendum, and the said Project was constructed by the United States in substantial conformity with the description contained in the said Act; that the Friant Dam, Madera Canal, and Friant-Kern Canal were essential parts of the said Project, as defined by the said Act of the Legislature of California, and adopted and authorized by the Congress of the United States; that at all times from the enactment of the said Act of the Legislature of California to the filing of the complaint in intervention herein, the nature of the said works and their intended uses were matters of general and common notoriety in the City of Fresno and its vicinity, and were well-known to the City of Fresno and to all the officers of said municipality; that during the said time the said intervenor made no effort to prevent the construction of said Dam and Canals or the diversion of water by means thereof, or to construct any works for the diversion of water from the San Joaquin River pursuant to any applications filed by said intervenor with the Division of Water Resources of the Department of Public Works, but at all times acquiesced in the construction of said Central Valley Project and the expenditures from the Treasury of the United States for the same; that [1580] all of the water which has been, or is now, diverted by means of said Dam and Canals, has been and is

necessary for the irrigation of the lands served by said Canals; that any injunction or physical solution which will preserve the rights of intervenor, if any, in the water of the said River will result in irreparable injury to the United States and to the Irrigation Districts and the owners of lands served by said Project; that intervenor is now remitted to its remedy of recovery of compensation for the taking of its property for public use under the Fourth Amendment to the Constitution of the United States.

Fourth Defense

I.

That each of these defendants has a contract with the United States for the delivery of water from the Friant-Kern Canal for the irrigation of the lands within the District; that the relief demanded by intervenor herein will, if granted, necessarily diminish the quantity of water which can be delivered to these defendants by the United States and render the same insufficient for the irrigation of the lands within the District.

II.

That the Kings River emerges from the Sierra Nevada Mountains at a distance approximately twenty (20) miles in an easterly direction from the City of Fresno, and flows thence in a southerly direction, and then in a southeasterly direction to Tulare Lake and the Fresno Slough; that for the greater part of its said course the said River flows

within a distance of twenty-five (25) miles or thereabouts from the City of Fresno; that from time immemorial the underground and percolating waters in that portion of the County of Fresno east of the said Fresno Slough have been supplied and fed by the waters of the Kings River and the Fresno Slough; that since the introduction of irrigated farming in said area, said underground and percolating waters have [1581] been supplied and fed by seepage and percolation from irrigation by means of water diverted from the Kings River as well as by direct seepage and percolation from said River; that from time immemorial the underground and percolating waters in the said area have drained into the San Joaquin River and increased the flow thereof.

III.

That for a long time prior to the commencement of this action and the filing of the complaint in intervention, the City of Fresno and farmers in Fresno County have ben pumping water for domestic use and irrigation; that the said pumping has so depleted the underground and percolating waters which would otherwise have drained into the San Joaquin River that the flow of said River has been greatly diminished, and large quantities of water have percolated from the said River into the south bank thereof and the soil adjacent thereto; that such diminution of the flow of said River will continue so long as the intervenor continues to pump water from the soil; that by reason of such diminu-

tion of the flow of said River, the flow thereof has been, and will be, reduced below the quantity to which the owners of lower lands having rights prior to that of the United States are entitled, and the United States will be compelled to release water to satisfy the requirements of the holders of such rights; that by reason thereof the United States and the defendant Irrigation Districts will suffer irreparable injury for which they have no adequate remedy at law.

Fifth Defense

I.

That complainant in intervention has at all times mentioned in said complaint in intervention had, and now has, a plain, speedy and adequate administrative remedy under the law of the State of California, with reference to any alleged rights under [1582] any appropriations or attempt to appropriate any waters of the San Joaquin River, and that said complainant in intervention has wholly and entirely failed and refused to pursue or exhaust said administrative remedy, and that this Court is without jurisdiction to proceed in the premises.

Sixth Defense

I.

That said complaint in intervention fails to state a cause of action against these defendants, or either of them, upon which any relief can be granted.

Seventh Defense

I.

That it affirmatively appears from the complaint in intervention and from the record heretofore made in this cause, that the above entitled action is, in fact and in law, an action against the United States of America, and seeks to affect its use of its property, and that the United States of America is an indispensable party hereto; that the United States of America has not consented to the bringing of this action, and that this Court was and is and at all times since the commencement of this action has been, entirely without jurisdiction in the premises.

Eighth Defense

I.

That no Federal question is presented by this action, that there is no diversity of citizenship of the parties to this action, that the United States is not a party to this action, and that the above entitled Court is without jurisdiction over these defendants or over the subject matter of this action; that these defendants have not consented and do not now consent to be sued herein.

Ninth Defense

I.

That it affirmatively appears from the complaint in intervention [1583] and from the record in this case that the complainant in intervention has a plain, adequate, and complete remedy at law, by reason of which this action cannot be maintained.

Tenth Defense

I.

That it affirmatively appears from the complaint in intervention and from the record of this cause, that the complainant in intervention seeks by indirection to manage, operate, and control property of the United States of America, over which this Court does not and cannot have jurisdiction.

Eleventh Defense

I.

That complainant in intervention has been guilty of laches and unreasonable delay in bringing this action, since the construction of Friant Dam and its related works has been underway since 1938, the purposes and method of operation of Friant Dam have been widely publicized the complainant in intervention knew of said construction and said plans of operation but failed to protest said construction or plans of operation, and the complainant in intervention failed to move to enter this cause of action until after the suit has been on file for more than four years.

Twelfth Defense

I.

That it affirmatively appears from the complaint in intervention, and from the record in this cause, that a public use in favor of the United States has and is attached to the subject matter of this action and by reason of which this action cannot be maintained.

Thirteenth Defense

I.

That these defendants allege that the State of California through the legislative and administrative branches of its government, has conferred upon the United States rights to appropriate [1584] unappropriated water of the San Joaquin River by means of Friant Dam and its related works for use in the operation of the Central Valley Project; that relying on these rights the United States has expended a large amount of money for the construction of the works of the Central Valley Project including Friant Dam and its related works; that by means of these works the United States has made and is making beneficial use and thus has appropriated water of the San Joaquin River, and that these rights of the United States are superior to the rights of the complainant, if any, to appropriate unappropriated water of the San Joaquin River.

Wherefore these defendants pray:

1. That this Honorable Court dismiss this complaint in intervention:

(a) For want of jurisdiction over these defendants;

(b) For want of jurisdiction over the property of these defendants;

(c) For want of jurisdiction over the property of the United States of America;

(d) For want of jurisdiction over the United States of America;

(e) For failure to state a cause of action against any of these defendants.

2. That each of the prayers for relief of the complainants in intervention be denied by this Honorable Court.

3. That this Honorable Court award to these defendants their costs.

MADDOX & ABERCROMBIE,
ERLING H. KLOSTER,
/s/ By JAMES K. ABERCROMBIE,
On Behalf of These Answering Defendants and Their Co-counsel, Above Named. [1585]

Duly Verified.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed September 10, 1953.

[Title of District Court and Cause.]

ANSWER OF MADERA IRRIGATION DISTRICT TO COMPLAINT IN INTERVENTION OF THE CITY OF FRESNO

Comes now the defendant, Madera Irrigation District, and answering the complaint in intervention of the City of Fresno, admits, denies, and alleges as follows, to-wit:

I.

Denies generally and specifically, each and every, allegation contained in paragraph II of the said

complaint in intervention, except that this defendant admits that the City of Fresno is a municipal corporation, organized and existing under and by virtue of the laws of the State of California, with a population of approximately 100,000 inhabitants, and is located in Fresno County, California, within the watershed of the San Joaquin River, with [1589] boundaries as shown in the map attached to the complaint in intervention and marked Exhibit "A"; that the said City of Fresno now has forty or more water wells and pumps located within the boundaries of said city and is presently pumping from the underground water strata, percolating waters, and subterranean streams underlying the said City of Fresno. Defendant further alleges that the adoption and enforcement by the above entitled Court of the physical solution plan proposed and set forth in the report in the complaint of the original plaintiffs in the above entitled action and prepared by Charles H. Lee, dated December 15, 1951, would consist of and cause waste of water, unreasonable use of water, unreasonable methods of use of water, and unreasonable methods of diversion of water.

II.

Denies generally and specifically, each and every, allegation contained in Paragraph III of said complaint in intervention, except that this defendant admits that defendants, Richard Boke and Jack Rodner, were at the time of filing the complaint in intervention engaged in operating a dam across the San Joaquin River near Friant, California, known as

Friant Dam, which is a part of the Central Valley Project of the United States, under the direction and control of the Bureau of Reclamation, together with the concrete abutments, levees, drum gates, and diversion works appurtenant thereto, and the concrete canals known as Friant-Kern Canal and Madera Canal, by means of which the said defendants have for a long time impounded in seasons of high water so much of the water of the San Joaquin River as can be safely impounded by means of said Dam, except for such of the capacity of said Dam as may be necessary to provide protection of the lower lands from flooding, and have stored the said water to the dry season and diverted a large part of the same for irrigation of lands which are not riparian to the San Joaquin River; that this defendant denies that practically all of [1590] the water of said River has been, or will be, so diverted or transported, but has no information or belief sufficient to enable it to determine what portion of the said water has been, or will be, so diverted and transported, and basing its denial upon such want of information or belief, denies that said defendants, or any of them, have diverted, or will divert, from the San Joaquin River any water which is now needed, or will be required, for reasonable prospective uses in or under the lands of plaintiff in intervention; defendant alleges that all of the acts of the defendants hereinabove admitted have been done by the defendants, Richard Boke, Martin Blote, and Jack Rodner, in their capacities as officers of the Bureau of Reclamation of the De-

part of Interior of the United States, in pursuance of the Acts of Congress authorizing the construction and operation of the Central Valley Project by the Bureau of Reclamation; that said acts of defendants are part and parcel of the Central Valley Project, as authorized and directed by said Acts of Congress.

III.

Denies generally and specifically, each and every, allegation contained in paragraph IV of said complaint in intervention.

IV.

Denies generally and specifically, each and every, allegation contained in paragraph V of said complaint in intervention.

Answering the Second Cause of Action Contained in Said Complaint in Intervention, Defendant Admits, Denies, and Alleges as Follows, to-wit:

I.

Answering paragraph I of the second cause of action with reference to paragraphs II to V inclusive, this answering defendant incorporates herein with the same force and effect the admissions, denials, and allegations contained in paragraphs I, II, III, and IV of its answer to said first cause of action of said complaint in [1591] intervention as fully as though set forth herein.

II.

This answering defendant admits that the Department of Finance of the State of California filed applications for appropriation of the water of the San Joaquin River, as alleged in the complaint in intervention, and assigned the rights of the State thereunder to the United States, and alleges that said applications are now pending before the Division of Water Resources of the Department of Public Works, and except for the facts so admitted and alleged, defendant has no information or belief sufficient to enable it to answer the allegations of paragraph II of the said second cause of action of said complaint in intervention, and basing its denial upon such want of information or belief, denies generally and specifically, each and every, allegation of said paragraph, except as herein admitted.

As a Second and Further Answer and Defense, this Defendant Alleges:

I.

That the Central Valley Project was constructed and is now operated by the United States, pursuant to divers Acts of Congress, including those mentioned in the complaint in intervention, and by means of appropriations from the Treasury of the United States for the purpose of providing for the general welfare; that construction of said Project was commenced by the United States during the year 1935 or thereabouts, and was completed in the year 1945 or thereabouts; that the said Project was defined and described in an Act of the Legisla-

ture of the State of California, enacted at the Session of 1933, which said Act was subsequently approved by the electors at a referendum, and the said Project was constructed by the United States in substantial conformity with the description contained in the said Act; that the Friant Dam, Madera Canal, and Friant-Kern Canal were essential parts of the said [1592] Project, as defined by the said Act of the Legislature of California, and adopted and authorized by the Congress of the United States; that at all times from the enactment of the said Act of the Legislature of California to the filing of the complaint in intervention herein, the nature of the said works and their intended uses were matters of general and common notoriety in the City of Fresno and its vicinity, and were well-known to the City of Fresno and to all the officers of said municipality; that during the said time the said intervenor made no effort to prevent the construction of said Dam and Canals or the diversion of water by means thereof, or to construct any works for the diversion of water from the San Joaquin River pursuant to any applications filed by said intervenor with the Division of Water Resources of the Department of Public Works, but at all times acquiesced in the construction of said Central Valley Project and the expenditures from the Treasury of the United States for the same; that all of the water which has been, or is now, diverted by means of said Dam and Canals, has been and is necessary for the irrigation of the lands served by said Canals; that any injunction or physical solution which will preserve the rights of inter-

venor, if any, in the water of the said River will result in irreparable injury to the United States and to the Irrigation Districts and owners of lands served by said Project; that intervenor is now remitted to its remedy of recovery of compensation for the taking of its property for public use under the Fifth Amendment to the Constitution of the United States.

As a Third and Further Answer and Defense, This Defendant Alleges:

I.

That the Madera Canal lies partly within the boundaries of the defendant, Madera Irrigation District, and said defendant has a contract with the United States for the delivery of water from said Canal for the irrigation of the lands within the District; that [1593] the relief demanded by intervenor herein will, if granted, necessarily diminish the quantity of water which can be delivered to this defendant by the United States and render the same insufficient for the irrigation of the lands within the District.

II.

That the Kings River emerges from the Sierra Nevada Mountains at a distance approximately twenty (20) miles in an easterly direction from the City of Fresno, and flows thence in a southerly direction, and then in a southeasterly direction to Tulare Lake and the Fresno Slough; that for the greater part of its said course the said River flows

within a distance of twenty-five (25) miles or thereabouts from the City of Fresno; that from time immemorial the underground and percolating waters in that portion of the County of Fresno east of the said Fresno Slough have been supplied and fed by the waters of the Kings River and the Fresno Slough; that since the introduction of irrigated farming in said area, said underground and percolating waters have been supplied and fed by seepage and percolation from irrigation by means of water diverted from the Kings River as well as by direct seepage and percolation from said River; that from time immemorial the underground and percolating waters in the said area have drained into the San Joaquin River and increased the flow thereof.

III.

That for a long time prior to the commencement of this action and the filing of the complaint in intervention, the City of Fresno and farmers in Fresno County have been pumping water for domestic use and irrigation; that the said pumping has so depleted the underground and percolating waters which would otherwise have drained into the San Joaquin River that the flow of said River has been greatly diminished, and large quantities of water have percolated from the said River into the south bank thereof and the soil adjacent thereto; that such diminution of the flow of said River [1594] will continue so long as the intervenor continues to pump water from the soil; that by reason of such diminution of the flow of said River, the flow thereof has been, and will be, reduced below

the quantity to which the owners of lower lands having rights prior to that of the United States are entitled, and the United States will be compelled to release water to satisfy the requirements of the holders of such rights; that by reason thereof the United States and the defendant Irrigation Districts will suffer irreparable injury for which they have no adequate remedy at law.

IV.

That the intervenor owns no land riparian to the San Joaquin River and has never acquired any right by appropriation or otherwise to divert said underground and percolating waters by pumping for domestic use of the inhabitants of the City of Fresno.

Wherefore, defendant prays that intervenor take nothing by this action and be perpetually enjoined and restrained from pumping water for domestic use of the inhabitants of the City of Fresno.

DAVID E. PECKINPAH,
DENVER C. PECKINPAH,
HAROLD M. CHILD, and
L. N. BARBER,
/s/ By HAROLD M. CHILD,
Attorneys for Defendant,
Madera Irrigation District.

Duly Verified.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed September 15, 1953.

[Title of District Court and Cause.]

ANSWER OF MADERA IRRIGATION DISTRICT TO COMPLAINT IN INTERVENTION OF TRANQUILLITY IRRIGATION DISTRICT, et al.

Comes now the defendant, Madera Irrigation District, and answering the complaint in intervention of the Tranquillity Irrigation District, Raymond Costales, William E. Clotz, N. D. Hughes, Iva Johnson, and Frank Miller, admits, denies, and alleges as follows, to-wit:

I.

Denies generally and specifically, each and every, allegation contained in paragraph II of said complaint in intervention, [1599] except that this defendant admits that the Tranquillity Irrigation District is, and for more than thirty (30) years last past has been, organized and existing under and by virtue of the laws of the State of California, and located in Fresno County, California, within the watershed of the San Joaquin River, with boundaries and shown on the map annexed to said complaint in intervention and marked Exhibit "A"; that said Tranquillity Irrigation District now has approximately eleven water wells and pumps located within the boundaries of said Tranquillity Irrigation District, which pump water for the lands, landowners, and inhabitants within the said Tranquillity Irrigation District, for the purpose of growing cotton, vegetables, alfalfa, rice, and other agri-

cultural products, which now are pumping from the underground water strata, percolating waters, and subterranean streams underlying said Tranquillity Irrigation District; and defendant further admits that there are also numerous domestic wells and pumps of inhabitants and landowners within the boundaries of said Tranquillity Irrigation District which are now pumping water for domestic purposes and uses within said Tranquillity Irrigation District from water strata, percolating waters, and subterranean streams underlying lands within the boundaries of said Tranquillity Irrigation District, but defendant has no information or belief sufficient to enable it to answer the allegation that the wells and pumps of the Tranquillity Irrigation District, or of the inhabitants and landowners within the boundaries of said District, have been pumping water for said purposes for more than thirty (30) years last past, and basing its denial upon such want of information or belief, denies that the pumps and wells of either the Tranquillity Irrigation District, or inhabitants, or landowners within the boundaries of said District, have been pumping water from the water strata, percolating waters, and subterranean streams underlying the lands within the boundaries of the Tranquillity Irrigation District for a period of five (5) [1600] years or more; defendant further alleges that the adoption and enforcement by the above entitled Court of the physical solution proposed and set forth in the report of the original plaintiffs in the above entitled action and prepared by Charles H. Lee, dated Decem-

ber 15, 1951, together with one additional dam across the San Joaquin River between Gravelly Ford and Mendota Pool, referred to in the said Charles H. Lee report, would constitute and cause waste of water, unreasonable use of water, unreasonable methods of use of water, and unreasonable methods of diversion of water.

II.

Denies generally and specifically, each and every, allegation contained in Paragraph III of said complaint in intervention, except that this defendant admits that the defendants, Richard Boke and Jack Rodner, were at the time of the filing of the complaint in intervention, engaged in operating a dam across the San Joaquin River near Friant, California, known as Friant Dam, which is a part of the Central Valley Project of the United States, under the direction and control of the Bureau of Reclamation, together with the concrete abutments, levees, drum gates, and diversion works appurtenant thereto, and the concrete canals known as Friant-Kern Canal and Madera Canal, by means of which the said defendants have for a long time impounded in seasons of high water so much of the water of the San Joaquin River as can be safely impounded by means of said Dam, except for such of the capacity of said Dam as may be necessary to provide protection of the lower lands from flooding, and have stored the said water to the dry season and diverted a large part of the same for irrigation of lands which are not riparian to the San Joaquin

River; that this defendant denies that practically all of the water of said River has been, or will be, so diverted or transported, but has no information or belief sufficient to enable it to determine what portion of the said water has been, or will be, so diverted and transported, and basing its denial [1601] upon such want of information or belief, denies that said defendants, or any of them, have diverted, or will divert, from the San Joaquin River any water which is now needed, or will be required, for reasonable prospective uses in or under the lands of plaintiff in intervention; defendant alleges that all of the acts of the defendants hereinabove admitted have been done by the defendants, Richard Boke, Martin Blote, and Jack Rodner, in their capacities as officers of the Bureau of Reclamation of the Department of Interior of the United States, in pursuance of the Acts of Congress authorizing the construction and operation of the Central Valley Project by the Bureau of Reclamation; that said acts of defendants are part and parcel of the Central Valley Project, as authorized and directed by said Acts of Congress.

III.

Denies generally and specifically, each and every, allegation contained in paragraph IV of said complaint in intervention.

IV.

Denies generally and specifically, each and every, allegation contained in paragraph V of said complaint in intervention.

V.

Defendant has no information or belief sufficient to enable it to answer the allegation that the Fresno Slough is, and at all times mentioned in said complaint in intervention has been, practically entirely supplied with water flowing naturally from the San Joaquin River into said Fresno Slough and past lands of the Tranquillity Irrigation District, and basing its denial upon such want of information or belief, denies generally and specifically, each and all of the allegations of said paragraph VII of said complaint in intervention.

VI.

Denies generally and specifically, each and every, [1602] allegation contained in paragraph VIII of said complaint in intervention.

Answering the Second Cause of Action Contained in Said Complaint in Intervention, Defendant Admits, Denies, and Alleges as Follows, to-wit:

I.

This defendant has no information or belief sufficient to enable it to answer the allegations of paragraph I of the said second cause of action, and basing its denial upon such want of information or belief, denies generally and specifically, each and every, allegation contained in said paragraph.

II.

Answer the allegations of paragraph II of the second cause of action, this defendant admits that the Tranquillity Irrigation District is located in a water deficient area, wherein the water level of the wells is continually lowering; except for said admissions defendant has no information or belief sufficient to enable it to answer the allegations of said paragraph, and basing its denial upon such want of information or belief, denies generally and specifically, each and every, allegation contained in said paragraph, except as hereinabove admitted.

III.

Defendant has no information or belief sufficient to enable it to answer the allegations of paragraph III of the second cause of action, and basing its denial upon such want of information or belief, denies generally and specifically, each and every, allegation contained in said paragraph.

As a second and further answer and defense, this defendant alleges:

I.

That the Central Valley Project was constructed and is now operated by the United States, pursuant to divers Acts of [1603] Congress, including those mentioned in the complaint in intervention, and by means of appropriations from the Treasury of the United States for the purpose of providing for the general welfare; that construction of said Project was commenced by the United States during the

year 1935 or thereabouts, and was completed in the year 1945 or thereabouts; that the said Project was defined and described in an Act of the Legislature of the State of California, enacted at the Session of 1933, which said Act was subsequently approved by the electors at a referendum, and the said Project was constructed by the United States in substantial conformity with the description contained in the said Act; that the Friant Dam, Madera Canal, and Friant-Kern Canal were essential parts of the said Project, as defined by the said Act of the Legislature of California, and adopted and authorized by the Congress of the United States; that at all times from the enactment of the said Act of the Legislature of California to the filing of the complaint in intervention herein, the nature of the said works and their intended uses were matters of general and common notoriety in the County of Fresno, in which the Tranquillity Irrigation District and the lands of the other plaintiffs in intervention are located, and are well-known to all of the plaintiffs in intervention; that during the said time the said intervenor did not, nor did any of them, make any effort to prevent the construction of said Dam and Canals or the diversion of water by means thereof, but at all times acquiesced in the construction of said Central Valley Project and expenditures from the Treasury of the United States for the same; that all of the water which has been, or is now, diverted by means of said Dam and Canals, has been and is necessary for the irrigation of the lands served by said Canals; that any in-

junction or physical solution which will preserve the rights of the intervenors, or any of them, if any, in the water of the said River will result in irreparable injury to the United [1604] States and to the Irrigation Districts and owners of lands served by said Project; that intervenors are now remitted to their remedy of recovery of compensation for the taking of their property for public use under the Fifth Amendment to the Constitution of the United States.

As a third and further answer and defense, this defendant alleges:

I.

That the Madera Canal lies partly within the boundaries of the defendant, Madera Irrigation District, and said defendant has a contract with the United States for the delivery of water from said Canal for the irrigation of the lands within the District; that the relief demanded by intervenors herein will, if granted, necessarily diminish the quantity of water which can be delivered to this defendant by the United States and render the same insufficient for the irrigation of the lands within the District.

II.

That the Fresno Slough is a tributary of the San Joaquin River and is fed by the Kings River and the seasonal overflow from Tulare Lake, which is also supplied by the Kings River; that from time immemorial the underground and percolating waters

in the Tranquillity Irrigation District and in the lands of the individual plaintiffs in intervention have been supplied and fed by the waters of the Kings River and the Fresno Slough, and waters from the Kings River and Fresno Slough have flowed into the San Joaquin River at a point below the lands of the plaintiffs in intervention on said Slough and have increased the flow of the said River.

III.

That for a long time prior to the commencement of this action, and the filing of the complaint in intervention, the Tranquillity Irrigation District and owners of lands therein and adjacent thereto, have been pumping water for domestic use and [1605] irrigation, both from the underground and percolating waters in said lands and directly from the Fresno Slough; that the said pumping has so depleted the underground and percolating waters in said lands and the water of the Fresno Slough that water from the San Joaquin River has been caused to flow into the said Slough and to percolate therefrom into the lands designated and described in the map attached to the complaint in intervention and marked Exhibit "A"; that the flow of the San Joaquin River has been thereby greatly diminished, and such diminution of the flow of said River will continue so long as the intervenors continue to pump water from the soil and from the Fresno Slough; that by reason of such diminution of the flow of said River, the flow thereof has been, and will be,

reduced below the quantity to which the owners of lower lands having rights prior to that of the United States are entitled, and the United States will be compelled to release water to satisfy the requirements of the holders of such rights; that by reason thereof the United States and the defendant Irrigation District will suffer irreparable injury, for which they have no adequate remedy at law.

Wherefore, defendant prays that intervenors take nothing by this action, and that the Tranquillity Irrigation District be perpetually enjoined and restrained from pumping water for District purposes.

DAVID E. PECKINPAH,
DENVER C. PECKINPAH,
HAROLD M. CHILD, and
L. N. BARBER,
/s/ By HAROLD M. CHILD,
Attorneys for Defendant,
Madera Irrigation District.

Duly Verified.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed September 15, 1953.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT IN INTERVENTION OF THE CITY OF FRESNO

(By So. San Joaquin)

Comes now the defendant Southern San Joaquin Municipal Utility District, created under and by virtue of the Municipal Utility District Act of the State of California (Statutes of 1921, Chapter 218), and answering the complaint in intervention of the City of Fresno admits, denies, and alleges as follows, to-wit:

I.

Denies generally and specifically, each and every, allegation contained in paragraph II of the said complaint in intervention, except that these defendants admit that the City of Fresno is a municipal corporation, organized and existing under and by virtue of the laws of the State of California, with a population of approximately 100,000 inhabitants, and is located in Fresno County, California, within the watershed of the San Joaquin River, with boundaries as shown in the map attached to the complaint in intervention [1610] and marked Exhibit "A"; that the said City of Fresno now has forty or more water wells and pumps located within the boundaries of said city and is presently pumping from the underground water strata, percolating waters and subterranean streams underlying the said City of Fresno.

II.

Deny generally and specifically, each and every, allegation contained in Paragraph III of said complaint in intervention, except that these defendants admit that said defendants, Richard Boke and Jack Rodner, were at the time of the filing of said complaint in intervention engaged in operating a dam across the San Joaquin River near Friant, California, known as Friant Dam, which is a part of the Central Valley Project of the United States, under the direction and control of the Bureau of Reclamation, together with the concrete abutments, levees, drum gates, and diversion works appurtenant thereto, and the concrete canals known as Friant-Kern Canal and Madera Canal, by means of which the said defendants have for a long time impounded in seasons of high water so much of the water of the San Joaquin River as can be safely impounded by means of said Dam, except for such of the capacity of said Dam as may be necessary to provide protection of the lower lands from flooding, and has stored the said water to the dry season and diverted a large part of the same for irrigation of lands which are not riparian to the San Joaquin River; that these defendants deny that practically all of the water of said River has been, or will be, so diverted or transported, but has no information or belief sufficient to enable it to determine what portion of the said water has been, or will be, so diverted and transported, and basing their denial upon such want of information or belief, deny that said defendants, or any of them,

have diverted, or will divert, from the San Joaquin River any water which is now needed, or will be required, for reasonable prospective uses in or under the lands of plaintiff in intervention; defendants [1611] allege that all of the acts of the defendant hereinabove admitted have been done by the defendants, Richard Boke, Martin Blote, and Jack Rodner, in their capacities as officers of the Bureau of Reclamation of the Department of Interior of the United States, in pursuance of the Acts of Congress authorizing the construction and operation of the Central Valley Project by the Bureau of Reclamation; that said acts of defendants are part and parcel of the Central Valley Project, as authorized and directed by said Acts of Congress.

III.

Deny generally and specifically, each and every, allegation contained in Paragraph IV of said complaint in intervention.

IV.

Deny generally and specifically, each and every, allegation contained in Paragraph V of said complaint in intervention.

Answering the Second Cause of Action Contained in Said Complaint, Defendant Admits, Denies, and Alleges as Follows, to-wit:

I.

Incorporate by reference the entire answer to the first cause of action.

II.

These answering defendants admit that the Department of Finance of the State of California filed applications for appropriation of the water of the San Joaquin River, as alleged in the complaint in intervention, and assigned the rights of the State thereunder to the United States, and allege that said applications are now pending before the Division of Water Resources of the Department of Public Works, and except for the facts so admitted and alleged, defendants have no information or belief sufficient to enable them to answer the allegations of paragraph II of the second cause of action of said complaint in intervention, and basing their denial upon such want of information or belief, denies generally and specifically, each and every, allegation of said paragraph, except as herein admitted. [1612]

As a Second and Further Answer and Defense, These Defendants Allege:

I.

That the Central Valley Project was constructed and is now operated by the United States, pursuant to divers Acts of Congress, including those mentioned in the complaint in intervention, and by means of appropriations from the Treasury of the United States for the purpose of providing for the general welfare; that construction of said Project was commenced by the United States during the year 1935 or thereabouts, and was completed in the year 1945 or thereabouts; that the said Project was

defined and described in an Act of the Legislature of the State of California, enacted at the Session of 1933, which said Act was subsequently approved by the electors at a referendum, and the said Project was constructed by the United States in substantial conformity with the description contained in the said Act; that the Friant Dam, Madera Canal, and Friant-Kern Canal were essential parts of the said Project, as defined by the said Act of the Legislature of California, and adopted and authorized by the Congress of the United States; that at all times from the enactment of the said Act of the Legislature of California to the filing of the complaint in intervention herein, the nature of the said works and their intended uses were matters of general and common notoriety in the City of Fresno and its vicinity, and were well-known to the City of Fresno and to all the officers of said municipality; that during the said time the said intervenor made no effort to prevent the construction of said Dam and Canals or the diversion of water by means thereof, or to construct any works for the diversion of water from the San Joaquin River pursuant to any applications filed by said intervenor with the Division of Water Resources of the Department of Public Works, but at all times acquiesced in the construction of said Central Valley Project and the expenditures from the Treasury of the United States for [1613] the same; that all of the water which has been, or is now, diverted by means of said Dam and Canals, has been and is necessary for the irrigation of the lands served

by said Canals; that any injunction or physical solution which will preserve the rights of intervenor, if any, in the water of the said River will result in irreparable injury to the United States and to the Irrigation Districts and the owners of lands served by said Project; that intervenor is now remitted to its remedy of recovery of compensation for the taking of its property for public use under the Fourth Amendment to the Constitution of the United States.

As a Third and Further Answer and Defense, the Defendant Alleges:

I.

That each of these defendants has a contract with the United States for the delivery of water from the Friant-Kern Canal for the irrigation of the lands within the District; that the relief demanded by intervenor herein will, if granted, necessarily diminish the quantity of water which can be delivered to those defendants by the United States and render the same insufficient for the irrigation of the lands within the District.

II.

That the Kings River emerges from the Sierra Nevada Mountains at a distance approximately twenty (20) miles in an easterly direction from the City of Fresno; and flows thence in a southerly direction, and then in a southeasterly direction to Tulare Lake and the Fresno Slough; that for the

greater part of its said course the said River flows within a distance of twenty-five (25) miles or thereabouts from the City of Fresno; that from time immemorial the underground and percolating waters in that portion of the county of Fresno east of the said Fresno Slough have been supplied and fed by the waters of the Kings River and the Fresno Slough; that since the [1614] introduction of irrigated farming in said area, said underground and percolating waters have been supplied and fed by seepage and percolation from irrigation by means of water diverted from the Kings River as well as by direct seepage and percolation from said River; that from time immemorial the underground and percolating waters in the said area have drained into the San Joaquin River and increased the flow thereof.

III.

That for a long time prior to the commencement of this action and the filing of the complaint in intervention, the City of Fresno and farmers in Fresno County have been pumping water for domestic use and irrigation; that the said pumping has so depleted the underground and percolating waters which would otherwise have drained into the San Joaquin River that the flow of said River has been greatly diminished, and large quantities of water have percolated from the said River into the south bank thereof and the soil adjacent thereto; that such diminution of the flow of said River will continue so long as the intervenor continues to pump water from the soil; that by reason of such diminu-

tion of the flow of said River, the flow thereof has been, and will be, reduced below the quantity to which the owners of lower lands having rights prior to that of the United States are entitled, and the United States will be compelled to release water to satisfy the requirements of the holders of such rights; that by reason thereof the United States and the defendant Irrigation Districts will suffer irreparable injury for which they have no adequate remedy at law.

IV.

That the intervenor owns no land riparian to the San Joaquin River and has never acquired any right by appropriation or otherwise to divert said underground and percolating waters by pumping for domestic use of the inhabitants of the City of Fresno. [1615]

As a Fourth and Further Answer and Defense, the Defendant Alleges:

I.

That complainant in intervention has at all times mentioned in said complaint in intervention had, and now has, a plain, speedy and adequate administrative remedy under the law of the State of California, with reference to any alleged rights under any appropriations or attempt to appropriate any waters of the San Joaquin River, and that said complainant in intervention has wholly and entirely failed and refused to pursue or exhaust said administrative remedy, and that this Court is without jurisdiction to proceed in the premises.

As a Fifth and Further Answer and Defense, the Defendant Alleges:

I.

That said complaint in intervention fails to state a cause of action against these defendants, or either of them, upon which any relief can be granted.

As a Sixth and Further Answer and Defense, the Defendant Alleges:

I.

That it affirmatively appears from the complaint in intervention and from the record heretofore made in this cause, that the above entitled action is, in fact and in law, an action against the United States of America, and seeks to affect its use of its property, and that the United States of America is an indispensable party hereto; that the United States of America has not consented to the bringing of this action, and that this Court was and is and at all times since the commencement of this action has been, entirely without jurisdiction in the premises. [1616]

As a Seventh and Further Answer and Defense, the Defendant Alleges:

I.

That no Federal question is presented by this action, that there is no diversity of citizenship of the parties to this action, that the United States is not a party to this action, and that the above enti-

tled Court is without jurisdiction over these defendants or over the subject matter of this action; that these defendants have not consented and do not now consent to be sued herein.

As an Eighth and Further Answer and Defense, the Defendant Alleges:

I.

That it affirmatively appears from the complaint in intervention and from the record in this case that the complainant in intervention has a plain, adequate, and complete remedy at law, by reason of which this action cannot be maintained.

As a Ninth and Further Answer and Defense, the Defendant Alleges:

I.

That it affirmatively appears from the complaint in intervention and from the record of this cause, that the complainant in intervention seeks by indirection to manage, operate, and control property of the United States of America, over which this court does not and cannot have jurisdiction.

As a Tenth and Further Answer and Defense, the Defendant Alleges:

I.

That complainant in intervention has been guilty of laches and unreasonable delay in bringing this action, since the construction of Friant Dam and

its related works has been underway since [1617] 1938, the purposes and method of operation of Friant Dam have been widely publicized the complainant in intervention know of said construction or plans of operation, and the complainant in intervention failed to move to enter this cause of action until after the suit had been on file for more than four years.

As an Eleventh and Further Answer and Defense, the Defendant Alleges:

I.

That it affirmatively appears from the complaint in intervention, and from the record in this cause, that a public use in favor of the United States has and is attached to the subject matter of this action and by reason of which this action cannot be maintained.

As a Twelfth and Further Answer and Defense, the Defendant Alleges:

I.

That the defendant alleges that the State of California, through the legislative and administrative branches of its government, has conferred upon the United States rights to appropriate unappropriated water of the San Joaquin River by means of Friant Dam and its related works for use in the operation of the Central Valley Project; that

relying on these rights the United States has expended a large amount of money for the construction of the works of the Central Valley Project including Friant Dam and its related works; that by means of these works the United States has made and is making beneficial use and thus has appropriated water of the San Joaquin River, and that these rights of the United States are superior to the rights of the complainant, if any, to appropriate unappropriated water of the San Joaquin River. [1618]

Wherefore the defendant prays:

1. That this Honorable Court dismiss this complaint in intervention:

(a) For want of jurisdiction over the defendant.

(b) For want of jurisdiction over the property of the defendant;

(c) For want of jurisdiction over the property of the United States of America;

(d) For want of jurisdiction over the United States of America;

(e) For failure to state a cause of action against any of these defendants.

2. That each of the prayers for relief of the complainants in intervention be denied by this Honorable Court.

3. That this Honorable Court award to the defendant their costs,

SOUTHERN SAN JOAQUIN MUNICIPAL UTILITY DISTRICT,

/s/ By J. O. REAVIS,

Attorney for Southern San Joaquin Municipal Utility District. [1619]

Duly Verified.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed September 16, 1953.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT IN INTERVENTION OF THE TRANQUILLITY IRRIGATION DISTRICT

(By Southern San Joaquin)

Comes now the defendant Southern San Joaquin Municipal Utility District, created under and by virtue of the Municipal Utility District Act of the State of California (Statutes of 1921, Chapter 218), and answering the complaint in intervention of the Tranquillity Irrigation District, admits, denies, and alleges as follows, to-wit:

First Defense

Answering the allegations of the first count set forth in said complaint in intervention:

I.

The defendant admits that Martin Blote and Jack Rodner are employees of the Bureau of Reclamation of the United States Department of the Interior; that the area sometimes known as the San Joaquin Valley District includes the area in which Friant Dam, [1623] Madera Canal, and Friant-Kern Canal are located; and that the defendants Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District, Delano-Earlimart Irrigation District, Lindsay-Strathmore Irrigation District, Lindmore Irrigation District, Ivanhoe Irrigation District, Saucelito Irrigation District, Orange Cove Irrigation District, Tulare Irrigation District, Lower Tule River Irrigation District, Stone Corral Irrigation District, Chowchilla Water District, Madera Irrigation District, and Southern San Joaquin Municipal Utility District are public corporations duly formed, organized, and existing under and by virtue of the laws of the State of California.

Further answering the allegations of said paragraph I, the defendant denies generally and specifically each and every material allegation of said paragraph I, and, to the contrary, alleges that the defendant employees of the United States of America neither have nor claim to have any right, power, or authority to do or perform any act touching or concerning the operation of the properties on which the plaintiff's cause of action is based, save and except to do, perform, and execute such lawful and authorized instructions as have or may hereafter

be given them in carrying out the operation of the Central Valley Project, authorized by the Congress of the United States by the Acts of Congress approved June 17, 1902 (32 Stat. 388); April 8, 1935 (49 Stat. 115); June 22, 1936 (49 Stat. 1622); August 26, 1937 (50 Stat. 844); and acts amendatory thereof and supplementary thereto; and that all of the acts and things done by the defendant employees of the United States or either of them in connection with said Central Valley Project, including those acts and things complained of, have been done and performed by them and each of them under and pursuant to the lawful authority and direction of the Secretary of the Interior of the United States of America and the Commissioner of the Bureau of Reclamation of the United States of America. [1624]

II.

Answering the allegations of paragraph II of the First Count of the Complaint in Intervention, the defendant admits that the Tranquillity Irrigation District is a public corporation formed, organized, and existing under and by virtue of the laws of the State of California for more than thirty (30) years last past, and is located in Fresno County; that said Tranquillity Irrigation District now has approximately eleven (11) water wells and pumps located within the boundaries of said District; that in addition to said eleven (11) water wells and pumps there are also other wells and pumps located within the boundaries of said district and that said wells

and pumps are presently pumping from the ground water underlying said Tranquillity Irrigation District.

Further answering the allegations of said paragraph II, the defendant denies generally and specifically each and every other material allegation of said paragraph II; and, to the contrary, alleges that the useable ground water underlying the Tranquillity Irrigation District is supplied, replenished, and supported at the present time, and at all material times in the past, by sources of water other than the San Joaquin River; and that the defendant is informed and believes, and on such information and belief, the defendant further alleges that in the future none of the useable water underlying the Tranquillity Irrigation District would be supplied from the San Joaquin River even if the San Joaquin River were allowed to flow uncontroiled by Friant Dam and its related works.

Further answering the allegations of said paragraph II, the defendant, further to the contrary, alleges that the construction and operation of the works proposed by the physical solution plan prepared by Charles H. Lee and dated December 15, 1951, said plan being referred to in said paragraph II, would cause waste of water, unreasonable use of water, unreasonable methods of use of water, and unreasonable methods of diversion of water contrary to the laws of the State of California prohibiting such waste, unreasonable use of water, unreasonable methods of use of water and unreasonable [1625] methods of diversion of water; and that the

imposition of said plan by injunction without the consent of the United States or its duly authorized officers would not be within this Court's judicial power.

Further answering the allegations of said paragraph II, the defendant has no knowledge or information sufficient to form a belief as to the riparian status of the land owned by the complainant in intervention and can neither admit nor deny such status, but if such status is material to this cause of action, the defendant demands strict and proper proof thereof.

III.

Answering the allegations of paragraph III of the First Count of the Complaint in Intervention, the defendant admits that a large portion of the flow of the San Joaquin River is being impounded, stored, and diverted by means of Friant Dam and its related works; and that a large portion of the water thus impounded, stored, and diverted is being used outside of the watershed of the San Joaquin River.

Further answering the allegations of said paragraph III, the defendant denies generally and specifically each and every other material allegation of said paragraph III and, to the contrary, alleges that Friant Dam and its related works were constructed and have been and are being operated pursuant to and in accordance with the acts of Congress referred to in paragraph I of this First Defense.

IV.

Answering the allegation of paragraph IV of the First Count of the Complaint in Intervention, the defendant denies generally and specifically each and every material allegation of said paragraph IV.

V.

Answering the allegations of paragraph V of the First Count of the Complaint in Intervention the defendant denies generally and specifically each and every material allegation of said paragraph V [1626] and, to the contrary, alleges that Friant Dam and its related works were constructed pursuant to and in accordance with the Acts of Congress referred to in paragraph I of this First Defense; and that Friant Dam and its related works have been operated and are being operated pursuant to and in accordance with said acts of Congress and pursuant to and in accordance with the laws and statutes of the State of California.

VI.

Answering the allegations of paragraph VI of the First Count of the Complaint in Intervention, the defendant admits the material allegations of said paragraph VI.

VII.

Answering the allegations of paragraph VII of the First Count of the Complaint in Intervention, the defendant admits that Fresno Slough receives a portion of its water from the San Joaquin River

during certain stages of flow in the San Joaquin River, and that Fresno Slough is located in Fresno County.

Further answering the allegations of said paragraph VII, the defendant denies that Fresno Slough is supplied practically entirely by water flowing from the San Joaquin River, and, if the quantity of water that is supplied to Fresno Slough from the San Joaquin River is material to this cause of action, the defendant demands strict and proper proof thereof.

Further answering the allegations of said paragraph VII, the defendant denies generally and specifically each and every other material allegation of said paragraph VII except that the defendant admits that by virtue of a judgment entered by the Superior Court of the State of California in and for the County of Madera in case No. 3094, captioned Miller and Lux, Inc. v. San Joaquin Valley Farm Lands Company, and by virtue of a judgment entered by the Superior Court of the State of California in and for the County of Madera in case No. 3095, captioned Miller and Lux Inc. v. Tranquillity Irrigation [1627] District, certain of the landowners owning riparian land in the Tranquillity Irrigation District were entitled, as against the plaintiff in those said actions (Miller and Lux, Inc.) to twelve per cent (12%) of the flows in excess of 1360 cubic feet of water per second naturally flowing in the San Joaquin River at a point on said river where Fresno Slough enters said river to the extent that said quantities could be reasonably and

beneficially used by said landowners on their then riparian land. These defendants lack information and belief as to the extent that said quantities of water could be reasonably and beneficially used on the alleged riparian lands and can make no allegation concerning the reasonable and beneficial use of said quantities, but if the reasonable and beneficial use of said quantities is material to this cause of action the defendant demands strict and proper proof thereof.

VIII.

Answering the allegations of paragraph VIII of the First Count of the Complaint in Intervention, the defendant denies generally and specifically each and every material allegation of said paragraph VIII; and these defendants allege that the complainants in intervention have interests contrary to the named plaintiffs in the principal case and contrary to the class, if any, which said plaintiffs in represent.

Second Defense

I.

Answering the allegations of paragraph I of the Second Count of the Complaint in Intervention, the defendant is without knowledge or information sufficient to form a belief as to the status as directors of the Tranquillity Irrigation District of Raymond Costales, William E. Clotz, and N. D. Hughes, or the status as Secretary of said District of Iva Johnson, or the status as Manager of said District of Frank Miller, or the status as Landowners in

said District of Raymond Costales, William E. Clotz, [1628] N. D. Hughes, Iva Johnson, and Frank Miller, but if said statuses are material to this cause of action, the defendant demands strict and proper proof thereof.

Further answering the allegations of said paragraph I, the defendant denies, generally and specifically each and every other material allegation of said paragraph I, save and except that the defendant admits that certain owners of riparian land in said Tranquillity Irrigation District had certain rights to flows of water originating in the San Joaquin River as set forth in paragraph VII of the First Defense of this answer.

Further answering the allegations of said paragraph I, the defendant has no knowledge or information sufficient to form a belief as to the riparian status of the land owned by the complainants in intervention and can neither admit nor deny such status, but if such status is material to this cause of action, the defendant demands strict and proper proof thereof.

II.

Answering the allegations of paragraph II of the Second Count of the Complaint in Intervention, the defendant denies generally and specifically each and every material allegation of said paragraph II, save and except that the defendant admits that certain owners of riparian land in said Tranquillity Irrigation District had rights to flows of water originating in the San Joaquin River as set forth above in paragraph VII of the First Defense of this answer.

The defendant lacks information and belief as to the extent that said quantities of water could be reasonably and beneficially used on the alleged riparian lands and can make no allegation concerning the reasonable and beneficial use of said quantities, but if the reasonable and beneficial use of said quantities is material to this cause of action the defendant demands strict and proper proof thereof.

III.

Answering the allegations of paragraph III of the Second Count of the Complaint in Intervention, the defendant denies generally and specifically each and every material allegation of said paragraph III, and, to the contrary are informed and believe and therefore alleges that the United States, through the Bureau of Reclamation, has in good faith negotiated with and attempted to reach an agreement with the Tranquillity Irrigation District concerning the quantities of water which have been taken or interfered with by the United States that the owners of land in said District are entitled to receive from the San Joaquin River and that the United States has offered to furnish a substitute supply of water for such quantities. The defendant is informed and believes and therefore alleges that the United States is still willing to continue such negotiations.

Third Defense

I.

That the Central Valley Project was constructed and is now operated by the United States, pursuant

to divers Acts of Congress, including those mentioned in the complaint in intervention, and by means of appropriations from the Treasury of the United States for the purpose of providing for the general welfare; that construction of said Project was commenced by the United States during the year 1935 or thereabouts, and was completed in the year 1945 or thereabouts; that the said Project was defined and described in an Act of Legislature of the State of California, enacted at the Session of 1933, which said Act was subsequently approved by the electors at a referendum, and the said Project was constructed by the United States in substantial conformity with the description contained in the said Act; that the Friant Dam, Madera Canal, and Friant-Kern Canal were essential parts of the said Project, as defined by the said Act of the Legislature of California, and adopted and authorized [1630] by the Congress of the United States; that at all times from the enactment of the said Act of the Legislature of California to the filing of the complaint of intervention herein, the nature of the said works and their intended uses were matters of general and common notoriety in the City of Fresno and its vicinity, and were well-known to the City of Fresno and to all the officers of said municipality; that during the said time the said intervenor made no effort to prevent the construction of said Dam and Canals or the diversion of water by means thereof, or to construct any works for the diversion of water from the San Joaquin River pursuant to any applications filed by said intervenor with the

Division of Water Resources of the Department of Public Works, but at all times acquiesced in the construction of said Central Valley Project and the expenditures from the Treasury of the United States for the same; that all of the water which has been, or is now, diverted by means of said Dam and Canals, has been and is necessary for the irrigation of the lands served by said Canals; that any injunction or physical solution which will preserve the rights of intervenor, if any, in the water of the said River will result in irreparable injury to the United States and to the Irrigation Districts and the owners of lands served by said Project; that intervenor is now remitted to its remedy of recovery of compensation for the taking of its property for public use under the Fourth Amendment to the Constitution of the United States.

Fourth Defense

I.

That the defendant has a contract with the United States for the delivery of water from the Friant-Kern Canal for the irrigation of lands within the District; that the relief demanded by intervenor herein will, if granted, necessarily diminish the quantity of water which can be delivered to the defendant by the United States and render the same unsufficient for the irrigation of the lands within the District. [1631]

II.

That the Kings River emerges from the Sierra Nevada Mountains at a distance approximately twenty (20) miles in an easterly direction, from the City of Fresno, and flows thence in a southerly direction, and then in a southeasterly direction to Tulare Lake and the Fresno Slough; that for the greater part of its said course the said River flows within a distance of twenty-five (25) miles or thereabouts from the City of Fresno; that from time immemorial the underground and percolating waters in that portion of the County of Fresno east of the said Fresno Slough have been supplied and fed by the waters of the Kings River and the Fresno Slough; that since the introduction of irrigated farming in said area, said underground and percolating waters have been supplied and fed by seepage and percolation from irrigation by means of water diverted from the Kings River as well as by direct seepage and percolation from said River; that from time immemorial the underground and percolating waters in the said area have drained into the San Joaquin River and increased the flow thereof.

III.

That for a long time prior to the commencement of this action and the filing of the complaint in intervention, the City of Fresno and farmers in Fresno County have been pumping water for domestic use and irrigation; that the said pumping has so depleted the underground and percolating waters which would otherwise have drained into the

San Joaquin River that the flow of said River has been greatly diminished, and large quantities of water have percolated from the said River into the south bank thereof and the soil adjacent thereto; that such diminution of the flow of said River will continue so long as the intervenor continues to pump water from the soil; that by reason of such diminution of the flow of said river, the flow thereof has been, and will be, reduced below the quantity to which the owners of lower lands having rights prior [1632] to that of the United States are entitled, and the United States will be compelled to release water to satisfy the requirements of the holders of such rights; that by reason thereof the United States and the defendant, and Irrigation Districts will suffer irreparable injury for which they have no adequate remedy at law.

Fifth Defense

I.

That complainant in intervention has at all times mentioned in said complaint in intervention had, and now has, a plain, speedy and adequate administrative remedy under the law of the State of California, with reference to any alleged rights under any appropriations or attempt to appropriate any waters of the San Joaquin River, and that said complainant in intervention has wholly and entirely failed and refused to pursue or exhaust said administrative remedy, and that this Court is without jurisdiction to proceed in the premises.

Sixth Defense

I.

That said complaint in intervention fails to state a cause of action against the defendant upon which any relief can be granted.

Seventh Defense

I.

That it affirmatively appears from the complaint in intervention and from the record heretofore made in this cause, that the above entitled action is, in fact and in law, an action against the United States of America, and seeks to affect its use of its property, and that the United States of America is an indispensable party hereto; that the United States of America has not consented to the bringing of this action, and that this Court was and is and at all times since the commencement of this action has been, entirely without jurisdiction in the premises. [1633]

Eighth Defense

I.

That no Federal question is presented by this action, that there is no diversity of citizenship of the parties to this action that the United States is not a party to this action, and that the above entitled Court is without jurisdiction over the defendant or over the subject matter of this action; that the defendant has not consented and does not now consent to be sued herein.

Ninth Defense

I.

That it affirmatively appears from the complaint in intervention and from the record in this case that the complainant in intervention has a plain, adequate, and complete remedy at law, by reason of which this action cannot be maintained.

Tenth Defense

I.

That it affirmatively appears from the complaint in intervention and from the record of this cause, that the complainant in intervention seeks by indirection to manage, operate, and control property of the United States of America, over which this Court does not and cannot have jurisdiction.

Eleventh Defense

I.

That complainant in intervention has been guilty of laches and unreasonable delay in bringing this action, since the construction of Friant Dam and its related works has been underway since 1938, the purposes and method of operation of Friant Dam have been widely publicized the complainant in intervention knew of said construction and said plans of operation but failed to protest said construction or plans of operation, and the complainant in intervention failed to move to enter this cause of action until after the suit has been on file for more than four years. [1634]

Thirteenth Defense

I.

That the defendant alleges that the State of California, through the legislative and administrative branches of its government, has conferred upon the United States rights to appropriate unappropriated water of the San Joaquin River by means of Friant Dam and its related works for use in the operation of the Central Valley Project; that relying on these rights the United States has expended a large amount of money for the construction of the works of the Central Valley Project including Friant Dam and its related works; that by means of these works the United States has made and is making beneficial use and thus has appropriated water of the San Joaquin River, and that these rights of the United States are superior to the rights of the complainant, if any, to appropriate unappropriated water of the San Joaquin River.

Wherefore the Defendant prays:

1. That this Honorable Court dismiss this complaint in intervention:

(a) For want of jurisdiction over the defendant;

(b) For want of jurisdiction over the property of the defendant;

(c) For want of jurisdiction over the property of the United States of America;

(d) For want of jurisdiction over the United States of America;

(e) For failure to state a cause of action against the defendant.

2. That each of the prayers for relief of the complaints in intervention be denied by this Honorable Court.

3. That this Honorable Court award the defendant their costs.

SOUTHERN SAN JOAQUIN MUNICIPAL UTILITY DISTRICT,

/s/ By J. O. REAVIS,

Attorney for Southern San Joaquin Municipal Utility District. [1635]

Duly Verified.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed September 16, 1953.

[Title of District Court and Cause.]

ORDER JOINING THE UNITED STATES AS A PARTY DEFENDANT

The plaintiffs and Tranquillity Irrigation District, Complainant in Intervention and the City of Fresno, Compiainant in Intervention, on the 11th day of June, 1953, filed written notice of motion to join the United States as a party defendant in the above entitled action under the terms of the Act of July 10, 1952 (66 Stat. 560; 43 U.S.C. § 666), after having previously, on January 21, 1953 and January 30, 1953, indicated to the record an intention to

make such a [1639] motion, and having on February 12, 1953, and on June 6, 1953, made oral motions to the same effect which oral motions were denied because they were made without notice; the notice of motion and motion filed on June 11, 1953, after due notice, came on regularly for hearing and was heard on June 30th, July 1st and July 2d, 1953; no written opposition was filed by anyone but oral objections were made and heard and argued; the Special Assistant to the Attorney General of the United States and the Deputy Attorney General of the State of California filed briefs and the matter was submitted.

The Court having heard and considered all of the arguments, briefs, matters and things urged in favor of, and in opposition to the granting of said motion, and therefrom and from and upon said motion, and from and upon all of the pleadings on file in the above entitled case and the evidence and proceedings had therein, and good and lawful cause appearing therefor, now, therefore,

It Is Hereby Ordered that the motion of the Plaintiffs, and of Tranquillity Irrigation District, Complainant in Intervention, and of the City of Fresno, Complainant in Intervention, to join the United States as a party defendant in the above entitled action under and pursuant to the terms of the Act of Congress of July 10, 1952 (66 Stat. 560; Title 43 U.S.C. §666) be and is hereby recognized; and, it is further hereby ordered that the United States be

and is hereby named, designated, made and joined as a defendant in the above entitled action on the Plaintiffs' Complaint and on the Complaint in Intervention of Tranquillity Irrigation District, and on the Complaint in Intervention of the City of Fresno, and

It is Further Hereby Ordered that the Clerk shall forthwith issue a summons on Plaintiffs' Complaint and upon the Complaint in Intervention of Tranquillity Irrigation District and upon the Complaint in Intervention of the City of Fresno, and that the counsel for plaintiffs and said Complainants in Intervention forthwith cause the same to be served, with true copy of the plaintiffs' Complaint and all amendments thereto and true copy of the Complaint in Intervention [1640] of Tranquillity Irrigation District and a true copy of the Complaint in Intervention of the City of Fresno in accordance with the terms of the above entitled Act and in accordance with the terms of the Federal Rules of Civil Procedure.

Dated at Los Angeles, California, this 18th day of September, 1953.

/s/ PEIRSON M. HALL,
United States District
Judge. [1641]

[Endorsed]: Filed September 18, 1953.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT IN INTERVENTION OF THE CITY OF FRESNO

(By Chowchilla Water District)

Come now defendants, Chowchilla Water District, sued herein as John Doe District Twenty-seven, and Frank Justin, Duval Williams, H. P. Dower, Mark Van Elswyk, and Charles Blaylock, sued herein as John Doe Directors Sixty-five to Seventy, and in answer to the complaint in intervention of the City of Fresno, admit, deny and allege as follows, to wit:

I.

Deny generally and specifically, each and every, allegation contained in Paragraph II of the said complaint in intervention, except that these defendants admit that the City of Fresno is a municipal corporation, organized and existing under and by virtue of the laws of the State of California, with a population of approximately 100,000 inhabitants, and is located in Fresno [1642] County, California, with boundaries as shown in the map attached to the complaint in intervention and marked Exhibit "A"; that the said City of Fresno now has forty or more water wells and pumps located within the boundaries of said city and is presently pumping from the underground water strata, percolating waters and subterranean streams underlying the said City of Fresno.

II.

Deny generally and specifically, each and every, allegation contained in Paragraph III of said complaint in intervention, except that these defendants admit that said defendants, Richard Boke and Jack Rodner, were at the time of the filing of said complaint in intervention engaged in operating a dam across the San Joaquin River near Friant, California, known as Friant Dam, which is a part of the Central Valley Project of the United States, under the direction and control of the Bureau of Reclamation, together with the concrete abutments, levees, drum gates, and diversion works appurtenant thereto, and the concrete canals known as Friant-Kern Canal and Madera Canal, by means of which the said defendants have for a long time impounded in seasons of high water so much of the water of the San Joaquin River as can be safely impounded by means of said Dam, except for such of the capacity of said dam as may be necessary to provide protection of the lower lands from flooding, and has stored the said water to the dry season and diverted a large part of the same for irrigation of lands which are not riparian to the San Joaquin River; that these defendants deny that practically all of the water of said River has been, or will be, so diverted or transported, but has no information or belief sufficient to enable it to determine what portion of the said water has been, or will be, so diverted and transported, and basing their denial upon such want of information or belief, deny that said defendants, or any of them, have diverted, or

will divert, from the San Joaquin River any water [1643] which is now needed, or will be required, for reasonable prospective uses in or under the lands of plaintiff in intervention; defendants allege that all of the acts of the defendants hereinabove admitted have been done by the defendants, Richard Boke, Martin Blote, and Jack Rodner, in their capacities as officers of the Bureau of Reclamation of the Department of Interior of the United States, in pursuance of the Acts of Congress authorizing the construction and operation of the Central Valley Project by the Bureau of Reclamation; that said acts of defendants are part and parcel of the Central Valley Project, as authorized and directed by said Acts of Congress.

III.

Deny generally and specifically, each and every, allegation contained in Paragraph IV of said complaint in intervention.

IV.

Deny generally and specifically, each and every, allegation contained in Paragraph V of said complaint in intervention.

Answering the Second Cause of Action Contained in Said Complaint, Defendants Admit, Deny and Allege as Follows, to-wit:

I.

Incorporate by reference the entire answer to the first cause of action.

II.

These answering defendants admit that the Department of Finance of the State of California filed applications for appropriation of the water of the San Joaquin River, as alleged in the complaint in intervention, and assigned the rights of the State thereunder to the United States, in trust for this answering defendant and for the other answering defendant Districts and the landowners within their boundaries, and allege that said applications are now pending before the Division of Water Resources of [1644] the Department of Public Works, and except for the facts so admitted and alleged, defendants have no information or belief sufficient to enable them to answer the allegations of Paragraph II of the second cause of action of said complaint in intervention, and basing their denial upon such want of information or belief, deny generally and specifically, each and every, allegation of said paragraph, except as herein admitted.

As a Second and Further Answer and Defense, These Defendants Allege:

I.

That the Central Valley Project was constructed and is now operated by the United States, pursuant to divers Acts of Congress, including those mentioned in the complaint in intervention, and by means of appropriations from the Treasury of the United States for the purpose of providing for the

general welfare; that construction of said Project was commenced by the United States during the year 1935 or thereabouts, and was completed in the year 1945 or thereabouts; that the said project was defined and described in an Act of the Legislature of the State of California, enacted at the Session of 1933, which said Act was subsequently approved by the electors at a referendum, and the said Project was constructed by the United States in substantial conformity with the description contained in the said Act; that the Friant Dam, Madera Canal, and Friant-Kern Canal were essential parts of the said Project, as defined by the said Act of the Legislature of California, and adopted and authorized by the Congress of the United States; that at all times from the enactment of the said Act of the Legislature of California to the filing of the complaint in intervention herein, the nature of the said works and their intended uses were matters of general and common notoriety in the City of Fresno and its vicinity, and were well-known to the City [1645] of Fresno and to all the officers of said municipality; that during the said time the said intervenor made no effort to prevent the construction of said Dam and Canals or the diversion of water by means thereof, or to construct any works for the diversion of water from the San Joaquin River pursuant to any applications filed by said intervenor with the Division of Water Resources of the Department of Public Works, but at all times acquiesced in the construction of said Central Valley Project and the expenditures from

the Treasury of the United States for the same; that all of the water which has been, or is now, diverted by means of said Dam and Canals, has been and is necessary for the irrigation of the lands served by said Canals; that any injunction or physical solution which will preserve the rights of intervenor, if any, in the water of the said River will result in irreparable injury to the United States and to the Irrigation Districts and the owners of lands served by said Project; that intervenor is now remitted to its remedy of recovery of compensation for the taking of its property for public use under the Fourth Amendment to the Constitution of the United States.

As a Third and Further Answer and Defense, These Defendants Allege:

I.

That this answering defendant has a contract with the United States for the delivery of water from the Friant-Kern Canal for the irrigation of the lands within the District; that the relief demanded by intervenor herein will, if granted, necessarily diminish the quantity of water which can be delivered to these defendants by the United States and render the same insufficient for the irrigation of the lands within the District.

II.

That the Kings River emerges from the Sierra Nevada [1646] Mountains at a distance approximately twenty (20) miles in an easterly direction

from the City of Fresno, and flows thence in a southerly direction, and then in a southeasterly direction to Tulare Lake and the Fresno Slough; that for the greater part of its said course the said River flows within a distance of twenty-five (25) miles or thereabouts from the City of Fresno; that from time immemorial the underground and percolating waters in that portion of the County of Fresno east of the said Fresno Slough have been supplied and fed by the waters of the Kings River and the Fresno Slough; that since the introduction of irrigated farming in said area, said underground and percolating waters have been supplied and fed by seepage and percolation from irrigation by means of water diverted from the Kings River as well as by direct seepage and percolation from said River; that from time immemorial the underground and percolating waters in the said area have drained into the San Joaquin River and increased the flow thereof.

III.

That for a long time prior to the commencement of this action and the filing of the complaint in intervention, the City of Fresno and farmers in Fresno County have been pumping water for domestic use and irrigation; that the said pumping has so depleted the undergound and percolating waters which would otherwise have drained into the San Joaquin River that the flow of said River has been greatly diminished, and large quantities of water have percolated from the said River into

the south bank thereof and the soil adjacent thereto; that such diminution of the flow of said River will continue so long as the intervenor continues to pump water from the soil; that by reason of such diminution of the flow of said River, the flow thereof has been, and will be, reduced below the quantity to which the owners of lower lands having rights prior to that of the United States and this answering defendant are entitled, and the United States will be compelled to [1647] release water to satisfy the requirements of the holders of such rights; that by reason thereof the United States and the defendant Irrigation Districts will suffer irreparable injury for which they have no adequate remedy at law.

IV.

That the intervenor owns no land riparian to the San Joaquin River and has never acquired any right by appropriation or otherwise to divert said underground and percolating waters by pumping for domestic use of the inhabitants of the City of Fresno.

As a Fourth and Further Answer and Defense, These Defendants Allege:

I.

That complainant in intervention has at all times mentioned in said complaint in intervention had, and now has, a plain, speedy and adequate administrative remedy under the law of the State of California, with reference to any alleged rights under

any appropriations or attempt to appropriate any waters of the San Joaquin River, and that said complainant in intervention has wholly and entirely failed and refused to pursue or exhaust said administrative remedy, and that this Court is without jurisdiction to proceed in the premises.

As a Fifth and Further Answer and Defense, These Defendants Allege:

I.

That said complaint in intervention fails to state a cause of action against these defendants, or either of them, upon which any relief can be granted.

As a Sixth and Further Answer and Defense, These Defendants Allege: [1648]

I.

That it affirmatively appears from the complaint in intervention and from the record heretofore made in this cause, that the above entitled action is, in fact and in law, an action against the United States of America, and seeks to affect its use of its property, and that the United States of America is an indispensable party hereto; that the United States of America has not consented to the bringing of this action, and that this Court was and is and at all times since the commencement of this action has been, entirely without jurisdiction in the premises.

As a Seventh and Further Answer and Defense, These Defendants Allege:

I.

That no Federal question is presented by this action, that there is no diversity of citizenship of the parties to this action, that the United States is not a party to this action, and that the above entitled Court is without jurisdiction over these defendants or over the subject matter of this action; that these defendants have not consented and do not now consent to be sued herein.

As an Eighth and Further Answer and Defense, These Defendants Allege:

I.

That it affirmatively appears from the complaint in intervention and from the record in this case that the complainant in intervention has a plain, adequate, and complete remedy at law, by reason of which this action cannot be maintained.

As a Ninth and Further Answer and Defense, These Defendants Allege: [1649]

I.

That it affirmatively appears from the complaint in intervention and from the record of this cause, that the complainant in intervention seeks by indirection to manage, operate, and control property of the United States of America, over which this Court does not and cannot have jurisdiction.

As a Tenth and Further Answer and Defense, These Defendants Allege:

I.

That complainant in intervention has been guilty of laches and unreasonable delay in bringing this action, since the construction of Friant Dam and its related works has been underway since 1938, the purposes and method of operation of Friant Dam have been widely publicized the complainant in intervention knew of said construction and said plans of operation but failed to protest said construction or plans of operation, and the complainant in intervention failed to move to enter this cause of action until after the suit had been on file for more than four years.

As an Eleventh and Further Answer and Defense, These Defendants Allege:

I.

That it affirmatively appears from the complaint in intervention, and from the record in this cause, that a public use in favor of the United States has and is attached to the subject matter of this action and by reason of which this action cannot be maintained.

As a Twelfth and Further Answer and Defense, These Defendants Allege: [1650]

I.

That these defendants allege that the State of California, through the legislative and administra-

tive branches of its government, has conferred upon the United States rights to appropriate unappropriated water of the San Joaquin River by means of Friant Dam and its related works in trust for this answering defendant, and other Irrigation District defendants in this action, and the landowners within their boundaries, for use in the operation of the Central Valley Project; that relying on these rights the United States has expended a large amount of money for the construction of the works of the Central Valley Project including Friant Dam and its related works; that by means of these works the United States has made and is making beneficial use and thus has appropriated water of the San Joaquin River, and that these rights of the United States in trust for this answering defendant and for the other answering defendant Districts and the landowners within their boundaries, are superior to the rights of the complainant, if any, to appropriate unappropriated water of the San Joaquin River.

Wherefore, these defendants pray:

1. That this Honorable Court dismiss this complaint in intervention:

(a) For want of jurisdiction over these defendants;

(b) For want of jurisdiction over the property of these defendants;

(c) For want of jurisdiction over the property of the United States of America;

(d) For want of jurisdiction over the United States of America;

(e) For failure to state a cause of action against any of these defendants. [1651]

2. That each of the prayers for relief of the complainants in intervention be denied by this Honorable Court.

3. That this Honorable Court award to these defendants their costs.

Dated: September 18, 1953.

GREEN, GREEN & PLUMLEY,
/s/ By WILFORD H. PLUMLEY,
Attorneys for Defendant Chowchilla Water District, et al. [1652]

Affidavit of Service by Mail Attached.

[Endorsed]: Filed September 21, 1953.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT IN INTERVENTION OF TRANQUILLITY IRRIGATION DISTRICT

(By Chowchilla Water District)

Come now defendants, Chowchilla Water District, sued herein as John Doe District Twenty-seven, and Frank Justin, Duval Williams, H. P. Dower, Mark Van Elswyk, and Charles Blaylock, sued herein as John Doe Directors Sixty-five to Seventy, and in

answer to the complaint in intervention of Tranquillity Irrigation District allege, deny and admit as follows:

First Defense.

I.

The complaint in intervention fails to state a claim against defendants upon which relief can be granted.

Second Defense

I.

In answer to Paragraph II of said complaint in intervention, these answering defendants admit that the Tranquillity Irrigation District is a public corporation, formed, organized and [1655] existing under and by virtue of the laws of the State of California, and further admit that the lands of said District are located in Fresno County, California; that these answering defendants deny generally and specifically each and every other allegation contained in said Paragraph II up to and including line sixteen (16) of page three (3) of said complaint in intervention, and the words "and Fresno Slough" on line seventeen (17) of said page three (3); that these answering defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the remainder of said line seventeen (17), page three (3), and lines eighteen (18) through thirty-two (32) on said page three (3), and the words "Lity Irrigation District" on line thirty-three (33) of said page three (3); that these

answering defendants deny generally and specifically each and every other allegation contained in said Paragraph II of said complaint in intervention.

II.

In answer to Paragraph III of said complaint in intervention, these answering defendants deny generally and specifically each and every allegation therein contained except that these answering defendants admit that Friant Dam, Friant-Kern Canal and Madera Canal exist.

III.

In answer to Paragraph IV of said complaint in intervention, these answering defendants deny generally and specifically each and every allegation therein contained except that these answering defendants admit that demands have been made that defendant cease impounding, storing and diverting water at Friant Dam, alleging affirmatively in this respect that said impounding, storing and diverting of water is a lawful action.

IV.

In answer to Paragraph V of said complaint in intervention, [1656] these answering defendants deny generally and specifically each and every allegation therein contained.

V.

In answer to Paragraph VII of said complaint in intervention, these answering defendants allege

that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and basing their denial upon this ground, deny generally and specifically each and every allegation therein contained.

VI.

In answer to Paragraph VIII of said complaint in intervention, these answering defendants deny generally and specifically each and every allegation therein contained.

VII.

In answer to Paragraph I of the Second Cause of Action in said complaint in intervention, these answering defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and basing their denial upon this ground, deny generally and specifically each and every allegation therein contained, denying generally and specifically, however, that the acts of the defendants are illegal acts, alleging further that the allegations therein contained do not constitute a basis for a class action, and further alleging that the rights, if any, of the persons therein named are not proper subject of a class action.

VIII.

In answer to Praagraph II of said Second Cause of Action in the complaint in intervention, these answering defendants deny generally and specifically each and every allegation therein contained.

IX.

In answer to Paragraph III of said Second Cause of Action of said complaint in intervention, these answering defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained and basing their denial on this ground, deny generally and specifically each and every allegation therein contained.

Third Defense

These answering defendants hereby incorporate by reference all of the allegations contained in Paragraphs I through VIII of the Third Defense in the answer to the amended complaint of plaintiffs on file herein, and do hereby reallege and replead all of the allegations therein contained as though again fully set forth herein.

Fourth Defense

These answering defendants allege that the issues contained in said complaint in intervention are not within the scope of the pretrial order heretofore entered by this Court and should not be considered in the trial now pending before the Court or in the decision or judgment rendered as to a plan of physical solution.

Wherefore, defendants demand:

1. That plaintiffs' prayer for injunction be denied.

2. That the alleged claims of the complainants in intervention be not considered in the plan of physical solution now before the Court.

3. That the plaintiffs in intervention take nothing by their complaint on file herein.

4. That the Court award the defendants their costs.

Dated: September 18, 1953.

GREEN, GREEN & PLUMLEY,
/s/ By DENSLOW GREEN,
Attorneys for Defendant Chowchilla Water District, et al. [1658]

Affidavit of Service by Mail Attached.

[Endorsed]: Filed September 21, 1953.

[Title of District Court and Cause.]

SUMMONS

(Complaint in Intervention, City of Fresno)

You are hereby summoned and required to serve upon plaintiff's attorney, whose address is 910 Security Bank Building, Fresno, California, an answer to the complaint which is herewith served upon you, within sixty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: September 30, 1953.

[Seal] /s/ EDMUND L. SMITH,
Clerk of Court,
/s/ (Illegible),
Deputy Clerk.

Return On Service of Writ

I hereby certify and return, that on the 16th day of October, 1953, I received this summons and served it together with the complaint herein as follows:

On the United States of America by (1) leaving a true and correct copy with Gertrude Johnson, authorized to accept service for the United States Attorney and (2) on the Attorney General by Registered mail.

Marshal's Fees: Service $2.00.

ROBERT W. WARE,
United States Marshal,
/s/ By MARGRETH M. COSTELLO,
Deputy U. S. Marshal.

[Endorsed]: Filed October 22, 1953.

[Title of District Court and Cause.]

SUMMONS

(Complaint in Intervention Tranquillity Irrigation District)

You are hereby summoned and required to serve upon plaintiff's attorney, whose address is 910 Se-

curity Bank Building, Fresno, California, an answer to the complaint which is herewith served upon you, within sixty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: September 30, 1953.

[Seal] /s/ EDMUND L. SMITH,
Clerk of Court,
/s/ (Illegible),
Deputy Clerk.

Return On Service of Writ

I hereby certify and return, that on the 16th day of October, 1953, I received this summons and served it together with the complaint herein as follows:

On the United States of America by (1) leaving a true copy with Gertrude Johnson, authorized to accept service for the United States Attorney and (2) on The Attorney General by Registered Mail.

Marshal's Fees: Service $2.00.

ROBERT W. WARE,
United States Marshal,
/s/ By MARGRETH M. COSTELLO,
Deputy U. S. Marshal.

[Endorsed]: Filed October 22, 1953.

[Title of District Court and Cause.]

SUMMONS

(United States of America)

To the above named Defendant: You are hereby summoned and required to serve upon plaintiff's attorney, whose address is 910 Security Bank Building, Fresno, California, an answer to the complaint which is herewith served upon you, within sixty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: September 30, 1953.

[Seal] /s/ EDMUND L. SMITH,
Clerk of Court,
/s/ (Illegible),
Deputy Clerk.

Return On Service of Writ

I hereby certify and return that on the 16th day of October, 1953, I received this summons and served it together with the complaint herein as follows:

On the United States of America by (1) leaving a true and correct copy with Gertrude Johnson, authorized to accept service for the United States Attorney and (2) on The Attorney General by Registered Mail.

Marshal's Fees: Service $2.00.

ROBERT W. WARE,
United States Marshal,
/s/ By MARGRETH M. COSTELLO,
Deputy U. S. Marshal.

[Endorsed]: Filed October 23, 1953.

[Title of District Court and Cause.]

ORDER FOR ISSUANCE AND SERVICE OF SUMMONS ON COMPLAINT IN INTERVENTION OF THE PEOPLE OF THE STATE OF CALIFORNIA [1728]

On the 13th day of April, 1950, this Court filed its Opinion (90 F. Supp. 773) which, among other things, denied motions to dismiss the Plaintiffs' Complaint for equitable relief and for Injunction for the use of water for agricultural and domestic purposes, and sustained objections made by defendants on the motion to dismiss to that portion of the Complaint which attempted to state a cause of action for injunction to restrain the impounding of water back of Friant Dam alleged to be contrary to the provisions of law prohibiting impounding of water in such amounts as would prevent a flow of the San Joaquin River sufficient for the maintenance of fish life, and held that the plaintiffs were not a proper party to seek such injunction, but that the State of California was the only party to bring such a proceeding if one would lie.

Thereafter, on May 3, 1950, the State of California filed a Complaint in Intervention asking that the defendant officials of the Bureau of Reclamation of the United States be restrained from impounding water back of Friant Dam in excess of any amount which would not permit a continuous flow of at least 250 second feet to reach the mouth of the Merced River (which lies some distance downstream from Mendota), for the maintenance of fish life, until the end of the 1950 spring salmon run.

An application by the State of California for an injunction pendente lite was filed the same day and noticed for hearing on May 15, 1950. The matter was heard extensively on May 15, 16, and 17, 1950, upon oral evidence and upon voluminous affidavits. During the course of the hearing an agreement was reached between the Bureau of Reclamation of the United States and the State of California under which a specific amount of water in addition to water for all other purposes would be released from Friant Dam for the period of the spring salmon run, and a fish ladder built. The application for a temporary restraining order was then withdrawn by the State and the matter then went off calendar and has never been reset. [1729]

Thereafter, on August 11, 1951, the State of California filed a motion for leave to file an Amended Complaint in Intervention and served the motion, together with a copy of the proposed Amended Complaint upon various parties as reflected by the proof of service on file. The motion was granted.

No answer was filed by any of the numerous parties to this proceeding to the original Complaint in Intervention of the State of California seeking to restrain the impounding which the State alleged would destroy fish life in the San Joaquin River, except Chowchilla Irrigation District. No answers have been filed by any of the defendants to the Amended Complaint in Intervention of the State of California except the Plaintiffs and Madera Irrigation District which latter admitted all of the allegations of the Amended Complaint in Intervention. No answer has been filed by any of the other fourteen irrigation districts who are defendants, or by any of the defendant officials of the Bureau of Reclamation although during the approximately 18 months of trial, which began on January 29, 1952, both the State of California and the defendant officials and Irrigation Districts participated in the production of evidence relating to the issues on trial generally and those raised or attempted to be raised by the State's Amended Complaint in Intervention.

The State of California also participated in the extensive pretrial hearings which consumed the days of December 20, 1951, and January 15, 16 and 17, 1952, and not only participated in the formulation of the pretrial orders of December 20, 1951 and January 17, 1952, but precipitated the hearing on pretrial by filing a motion for pretrial on November 26, 1951, and serving it on all parties.

It does not appear that summons or process was ever requested to be, or was issued, upon the original Complaint in Intervention of the State of Cali-

fornia and no returns of service thereof or of the Complaint are on file. Nor is there any record of the issuance of process, or service thereof or of the Amended Complaint in Intervention, upon any of the parties other than such copy of the [17:30] Complaint as was served with the proposed motion for leave to file the Amended Complaint in Intervention.

Rule 4 of the Federal Rules of Civil Procedure provides for the issuance of summons "upon the filing of the complaint." Rule 4(d) requires that the summons and complaint shall be served together. There being no specific provision in the Rules that summons need not be issued, and the complaint need not be served, it is apparent that the provisions of Rule 4 relating to issuance of summons and service thereof with the complaint, applies as well to a complaint in intervention as it does to the original complaint.

While Ex Parte Indiana Transportation Co., 244 U. S. 456, was an admiralty case, nevertheless I see no reason why the doctrine therein announced should not be applied in any other case. There Mr. Justice Holmes, in speaking of the intervenors in that case, stated, "The new claimants are strangers and must begin their action by service just as if no one had sued the defendant before."

On August 26, 1953, after motion by the plaintiffs under the rules, and hearing thereon, the Court made its order substituting as defendant, Clyde L. Spencer, individually, and as Supervising Engineer, California Projects, Bureau of Reclamation of the United States in place and stead of Richard L.

Boke individually, and as Regional Director, Region 2, of the Bureau of Reclamation of the United States, who had resigned, and required Spencer to answer or otherwise plead within 60 days [F.R.C.P. 12(a)]. No such motion has been made by the State of California, although its original complaint in intervention named Krug, then Secretary of the Interior, Strauss, then Commissioner of the Bureau of Reclamation, Boke, then Regional Director of the Bureau of Reclamation, Blote, then Regional Watermaster of the Bureau of Reclamation, Rodner, then District Manager of the Bureau of Reclamation, and Durant, then Engineer in charge of Friant Dam for the Bureau of Reclamation, in their respective official capacities of the Department of the Interior and Bureau of Reclamation, as well as individually. Neither the plaintiffs individually or as [1731] representatives of a class, nor the class represented by the plaintiffs, nor any members thereof, were named by the State as defendants in its Complaint in Intervention. The Amended Complaint in Intervention made no amendment as to the parties defendant. Thus the parties defendant in the amended complaint in intervention are the same as in the original Complaint in Intervention.

It may thus be assumed that a necessary postulate of the State in its Amended Complaint in Intervention is based upon the legal proposition that the court had jurisdiction to enforce all or some of the claims and rights, asserted in the Amended Complaint in Intervention of the State, by the injunctive process which could expend itself upon such

officials and other defendants under cases referred to in 90 F. Supp. 773.

In the Amended Complaint in Intervention filed by the State of California, it is alleged that the United States holds whatever water rights it does hold, if any, in connection with the within litigation as trustee only. If the contentions of the State of California are bona fide concerning the allegations and the relief sought in its Amended Complaint in Intervention, not only as to the ownership of such water rights but also its allegation and prayer for declaratory relief and physical solution, it should long ago have had process issued and served so as to permit the various parties to the action to answer or otherwise plead to the Amended Complaint in Intervention. Whether the failure to secure the issuance and service of process, in accordance with the rules, was deliberate for some undisclosed purpose or was an oversight, is immaterial, as process should have been issued and served long before this upon the defendants who are officials of the United States, and upon the defendant districts.

No service of process having been had, no motion to dismiss has ever been filed and thus the question as to whether or not this Court has jurisdiction to grant the relief claimed by the State in its Amended Complaint in Intervention has never been raised. Compliance [1732] with this Order will permit the parties to raise such questions, and this Court to decide them in the first instance, in an orderly manner.

In a proceeding for a Writ of Prohibition (206 F. 2d 303) in the United States Court of Appeals for this Circuit entitled, "United States of America v. United States District Court, et al.," it was asserted by the petitioner therein that: "4. The United States of America is the owner of the rights to the use of water pursuant to which the waters of the San Joaquin River are impounded in Millerton Lake." Such assertion is contrary to the contentions of the State in its Amended Complaint in Intervention although the State filed a brief in said Prohibition proceeding in support of the petition for a writ of prohibition.

The result of the failure of the State to cause issuance and service of process on its Complaint in Intervention or the Amended Complaint in Intervention is that there is no responsive pleading before this Court setting forth the claims of either the United States or its officials who are defendants in the within action, or the other defendants, as against the claims of right and ownership asserted by the State in its Amended Complaint in Intervention.

Whether or not injunctive relief on the State's Amended Complaint in Intervention can be granted without the substitution of Spencer as Boke's successor is not now necessary to decide. And whether or not Rule 25(d) permits substitution of Spencer for Boke as a defendant in the State's Amended Complaint in Intervention without notice to Spencer is unnecessary to decide as sufficient authority exists under Rules 19, 20 and 21 to authorize the

issuance and service of summons on him on the State's Amended Complaint in Intervention.

The State's original Complaint in Intervention named only two irrigation districts as parties defendant, viz.: Madera Irrigation District and Southern San Joaquin Municipal Utility District. All of the other irrigation districts have appeared in answer to the plaintiffs' pleadings and have participated throughout in the trial. [1733] Sufficient authority likewise exists under Rules 19, 20 and 21 to authorize the issuance and service of summons on those not designated as defendants in the State's Complaint in Intervention but who have participated throughout in the trial.

On September 18, 1953, this Court made and filed its Order joining the United States as a party defendant under the terms and provisions of the Act of July 10, 1952, [66 Stat. 560; (43 U.S.C.A. § 666)].

The above case has been on trial as heretofore indicated for approximately 18 months. Complaints in Intervention were allowed to be filed by the City of Fresno and the Tranquillity Irrigation District and on May 8, 1953 process was required to be issued and served thereon. Under Rule 12(a) F.R.C.P. an officer of the United States has 60 days to answer or otherwise plead. Likewise the United States has 60 days to answer or otherwise plead under 43 U.S.C.A. § 666, after service of process is completed under the above mentioned Order of September 18, 1953, joining the United States as a party defendant.

Consequently the time has arrived, or will arrive

on a day certain, when responsive pleadings must be filed to the Complaints in Intervention of the City of Fresno and the Transquillity Irrigation District and when responsive pleadings must be filed, or adopted, by Spencer as substituted party defendant for Boke, and when a responsive pleading must be filed by the United States under the Order of September 18, 1953, joining it as a party.

To permit the State to any longer withhold service of process on its Complaint in Intervention, as amended, can only result in confusion and delay and great expense to the parties. Such confusing and delaying tactics should not be tolerated in the interest of justice and should not have been tolerated this long. The State should not be permitted any more than any other litigant to sit by and attempt to get the fruits of litigation without bearing its burdens. Especially is this so when it comes voluntarily into a [1734] lawsuit as it did in this one. The within Order will operate to the end that a date certain will arrive when all parties must appear and answer or otherwise plead not only to the interventions of the City of Fresno and Tranquillity Irrigation District, but as well to the Order joining the United States as a party and the Order substituting Spencer for Boke and the Complaint in Intervention of the State of California.

Good cause appearing therefor, It Is Hereby Ordered, on the Court's own motion,

1. That the Clerk of this Court forthwith issue summons upon the Amended Complaint in Intervention of the State of California, as follows:

To the United States of America,

Martin Blote, individually, and as Regional Watermaster of the Bureau of Reclamation of the United States and/or Superintendent of Operations of the Central Valley Project of the Bureau of Reclamation of the United States,

Jack Rodner, individually, and as District Manager of the Bureau of Reclamation of the United States,

R. K. Durant, individually, and as Construction Engineer and Resident Engineer at Friant Dam, for the Bureau of Reclamation of the United States,

Southern San Joaquin Municipal Utility District, a public corporation,
Chowchilla Water District,
Lindsay-Strathmore Irrigation District,
Lindmore Irrigation District,
Ivanhoe Irrigation District,
Saucelito Irrigation District,
Orange Cove Irrigation District,
Tulare Irrigation District,
Lower Tule River Irrigation District, [1735]
Stone Corral Irrigation District,
Terra Bella Irrigation District,
Porterville Irrigation District,
Exeter Irrigation District,
Delano-Earlimart Irrigation District,
Tranquillity Irrigation District, Intervenor,
City of Fresno, Intervenor, and

Clyde Spencer, individually, and as Supervising Engineer, California Projects, Bureau of Reclamation of the United States.

2. That the Attorney General of the State of California forthwith cause the same to be served, together with a true copy of its Amended Complaint in Intervention upon the United States in accordance with the provisions of the Act of July 10, 1952 (43 U. S. C. A. § 666), and upon all the remaining individuals and parties designated above in paragraph 1 hereof in accordance with the Federal Rules of Civil Procedure. The Madera Irrigation District and the plaintiffs having answered, no summons is required to be issued to, or served upon them.

3. The Clerk, upon the issuance of said summons, shall transmit the same to the United States Marshal for service in accordance with the terms of this Order; if the United States Marshal shall not, within fifteen (15) days from date hereof, receive instructions and the costs of service from the Attorney General of the State of California, he shall so advise the Clerk, and thereupon the Court will make its order permitting any other party to this suit to make such service or will hear any motion by any party to this lawsuit concerning the Amended Complaint in Intervention of the State of California and its Answer to Plaintiffs' Complaint, which such party may deem lawful to make.

4. Copy of this order is being mailed to counsel of all parties. In the event any of the parties named in paragraph 1 herein desire to appear by answer

or otherwise before the expiration of said [1736] 15-day period, it will not be necessary to complete service of summons.

Dated at Los Angeles, California, this 29th day of October, 1953.

/s/ PEIRSON M. HALL,
Judge. [1737]

[Endorsed]: Filed October 29, 1953.

[Title of District Court and Cause.]

SUMMONS

(On Complaint in Intervention of People of California)

To the above named Defendants: United States of America:

You are hereby summoned and required to serve upon Edmund G. Brown, Attorney General, State of California, plaintiff's attorney, whose address is: San Francisco, California, an answer to the complaint which herewith served upon you, within Sixty (60) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] EDMUND L. SMITH,
Clerk of Court,
/s/ CHARLES E. JONES,
Deputy Clerk.

Date: October 29, 1953.

Return on Service of Writ

I hereby certify and return, that on the 19th day of November, 1953, I received this summons and served it together with the complaint herein as follows: (1) Served by leaving a true and correct copy with Gertrude Johnson, authorized to accept service for the United States Attorney, at Room 600, Federal Building, Los Angeles, California; (2) by registered mail on The Attorney General of the United States, at Washington, D. C.—all on November 19, 1953, at 11:55 A.M.

Marshal's Fees
Travel $2.00
Service .....

ROBERT W. WARE,
United States Marshal,
/s/ By LUCILLE GORDON,
Deputy United States Marshal.

[Endorsed]: Filed November 24, 1953.

[Title of District Court and Cause.]

SEPARATE SUMMONS

(On Complaint in Intervention
Martin Blote et al.)

To the above named Defendant:

You are hereby summoned and required to serve upon Edmund G. Brown, Attorney General, State of California, plaintiff's attorney, whose address is:

San Francisco, California, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] EDMUND L. SMITH,
Clerk of Court,
/s/ CHARLES E. JONES,
Deputy Clerk.

Return on Service of Writ

I hereby certify and return, that on the 19th day of November, 1953, I received this summons and served it together with the complaint herein as follows: On 11-19-53 I personally served said summons and complaint on Martin Bloke as Regional Watermaster of the Bureau of Reclamation and Individually, I also served Clyde Spencer individually and as supervising Engineer California Projects, Bureau of Reclamation of the United States at Bureau of Reclamation Region 2, Marconi and Fulton Avenues, Sacramento, Calif.

Marshal's Fees: Travel 120 Miles, $2.00; Service 4, $8.00; Total $10.00.

FRANK O. BELL,
United States Marshal,
/s/ By JOHN V. O'BRIEN,
Deputy United States Marshal.

[Endorsed]: Filed November 25, 1953.

[Title of District Court and Cause.]

SUMMONS

(On Complaint in Intervention)

To the above named Defendants: except United States of America:

You are hereby summoned and required to serve upon Edmund G. Brown, Attorney General, State of California, plaintiff's attorney, whose address is: San Francisco, California, an answer to the complaint which herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] EDMUND L. SMITH,
Clerk of Court,
/s/ CHARLES E. JONES,
Deputy Clerk.

Date: October 29, 1953.

Return on Service of Writ

United States of America,
Southern District of California—ss.

I hereby certify and return that I served the annexed Summons and Complaint in Intervention on the therein-named Tranquillity Irrigation District, by handing to and leaving a true and correct copy thereof with Iva Johnson, Secretary, personally, at

Tranquillity, California, in said District on the 24th day of November, 1953.

Fees	$2.00
Mlg.	6.00
	$8.00

ROBERT W. WARE,
U. S. Marshal,
/s/ By DAVID E. HAYDEN,
Deputy.

Return on Service of Writ

United States of America,
Southern District of California—ss.

I hereby certify and return that I served the annexed Summons and Complaint in Intervention on the therein-named City of Fresno, by handing to and leaving a true and correct copy thereof with Gordon G. Dunn, Mayor of the City of Fresno, personally at Fresno, in said District on the 24th day of November, 1953.

Fees $2.00

ROBERT W. WARE,
U. S. Marshal,
/s/ By DAVID E. HAYDEN,
Deputy.

[Endorsed]: Filed December 1, 1953.

[Title of District Court and Cause.]

ORDER GRANTING MOTION TO SUBSTITUTE PARTY

There having been filed in the above entitled Court on or about the 8th day of October, 1953, a Notice of, and Motion to substitute Clyde Spencer as a defendant in intervention under the Complaint in Intervention of the City of Fresno, a municipal corporation, on file herein, both individually and as Supervising Engineer, California Projects, Bureau of Reclamation of the United States in all pleadings in intervention and other pleadings and matters connected therewith in place and instead of defendant Richard Boke, individually and as an official of the United States Bureau of Reclamation, to wit: California Regional Director, Region 2 of the Bureau of Reclamation of the United States, and as Regional Director of the United States Bureau of [1796] Reclamation, and to amend the Complaint in Intervention of the City of Fresno herein and the matter after continuance in open court having come up regularly for hearing on the 23rd day of November, 1953, and the Court having considered the pleadings and proposed pleadings filed herein and all other pleadings, affidavits and matters on file under said Complaint in Intervention of said City of Fresno, the original Complaint herein and all other Complaints in Intervention and matters in connection therewith; and having heard and considered arguments of counsel thereon:

And it appearing to the Court: that due, lawful

and reasonable notice of said motion has been given to all counsel of record and to said Clyde Spencer, personally and individually, and as Supervising Engineer, California Projects, Bureau of Reclamation of the United States; that the said Richard L. Boke resigned as California Regional Director, Region 2 of the Bureau of Reclamation of the United States and as Regional Director of the United States Bureau of Reclamation, effective at the close of business June 30, 1953; that Clyde Spencer is the successor in office of the said Richard L. Boke as California Regional Director, Region 2 of the United States Bureau of Reclamation and as Regional Director of the United States Bureau of Reclamation, effective at the close of business June 30, 1953; that Clyde Spencer is the successor in office of the said Richard L. Boke and was on or about the 1st day of July, 1953, appointed "Supervising Engineer, California Projects, Bureau of Reclamation" with power to exercise all of the authority theretofore vested in the said Richard L. Boke as California Regional Director, Region 2 of the Bureau of Reclamation of the United States, sometimes referred to as Regional Director of the United States Bureau of Reclamation, and subordinate officials as evidenced by the proposed amended pleadings and affidavits and pleadings on file herein and by Order No. 2725 of the Department of the Interior of the United States, reading as follows: [1797]

"Department of the Interior
Office of the Secretary

(Order 2725)

"Supervising Engineer, California Projects, Bureau of Reclamation

"Delegation of Authority With Respect to Certain Functions and Exercise of Existing Authority by Subordinate Officials

June 25, 1953

"Section 1. Supervising Engineer. On and after July 1, 1953, the Supervising Engineer, California Projects, Bureau of Reclamation, may exercise all of the authority theretofore vested in the Regional Director and subordinate officials, Region 2, Bureau of Reclamation.

"Sec. 2. Subordinate officials. Subordinate officials of Region 2, Bureau of Reclamation will continue to exercise the authority theretofore vested in them until such time as the Supervising Engineer may withdraw such authority.

"Sec. 3. Redelegation. The Supervising Engineer may redelegate or authorize the redelegation of the authority vested in him by this order. (Sec. 2, Reorganization Plan No. 3 of 1950, 15 F. R. 3174.)

DOUGLAS McKAY,
Secretary of the Interior.

(F. R. Doc. 53-5790; Filed, July 1, 1953; 8:45 a.m.)"

And it further appearing: that the motion for substitution was timely made: that there is substantial need for continuing and maintaining the within action; that by supplemental pleadings duly filed and from the affidavits on file under the original complaint and cross-complaints on file herein Clyde Spencer adopts and continues, and threatens to adopt and continue, the action of his predecessor in office, viz.: Richard L. Boke in enforcing laws averred in the complaint and in amendments thereto to be in violation of the Constitution of the United States; that by supplemental pleadings duly filed and from the affidavits on file herein Clyde Spencer adopts and continues, and threatens to adopt and continue, the action of his predecessor [1798] in the impounding, taking, regulating, preventing the flow of, and alleged wasting of the waters of the San Joaquin River in the manner, methods and times which are averred by said complaint in intervention of said City of Fresno and the proposed verified amendment to said complaint in intervention of said City of Fresno and the original complaint on file herein and its amendments to be in violation of the laws and statutes of the United States and in excess of the powers and duties of said Richard L. Boke as Regional Director, Region 2 of the Bureau of Reclamation of the United States and as Regional Director of said United States Bureau of Reclamation as prescribed, limited or permitted by such laws and statutes.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the motion to substitute Clyde Spencer, individually and as Supervising Engineer, California Projects, United States Bureau of Reclamation as a defendant in intervention herein in place and instead of Richard L. Boke is hereby granted and said Clyde Spencer is hereby substituted as defendant in intervention, both individually and in his official capacity as Supervising Engineer, California Projects, Bureau of Reclamation of the United States, in place and instead of Richard L. Boke, individually and as Regional Director, Region 2 of the Bureau of Reclamation of the United States and as Regional Director of said United States Bureau of Reclamation, without prejudice to the proceedings already had in the within action, and that said Clyde Spencer appear and answer the complaint and amendments and supplements thereto in the within action within 60 days after service on him of a copy of this order.

It Is Further Ordered, Adjudged and Decreed that the Motion to Amend the Complaint in Intervention of the City of Fresno is hereby granted.

Dated at Los Angeles, California this 3rd day of December, 1953.

/s/ PEIRSON M. HALL,
U. S. District Judge. [1799]

[Endorsed]: Filed December 3, 1953.